

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

MARILYN BAGWELL
Claimant

APPEAL NO: 10A-UI-13733-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRAL IOWA HOSPITAL CORP
Employer

OC: 08/01/10
Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Marilyn Bagwell (claimant) appealed an unemployment insurance decision dated September 24, 2010, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Central Iowa Hospital Corporation (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 22, 2010. The claimant participated in the hearing. The employer participated through Christy Niehuas, Human Resources Business Partner and Susan Wilson, Manager. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time registered nurse from April 14, 1997 through July 27, 2010. The employer's work rules provide that an employee who is involved in two 3rd level offenses within a 24-month period will be discharged. The claimant was discharged after she was involved in two 3rd level disciplinary actions within two months.

The claimant received a level two, written warning on May 25, 2010 due to patient complaints about the level of care she provided. During the few weeks before that date, there were several instances in which patients or their families requested that the claimant not provide care for them. On one patient satisfaction survey, the patient wrote that the techs were very professional and most nurses were professional except for the claimant. The patient wrote that the claimant did not wash her hands or wear gloves, she used her teeth to open sterilized medication packages and then constantly complained about how busy she was.

Another patient wrote that there are good nurses and others that do not care. One of the ones that do not care was a nurse named Marilyn. She forgot one of my meds and forgot to give me

insulin at bedtime. When the next shift came on, the patient asked the nurse about the medication and the insulin and the nurse said she would check on it. Both nurses were outside the patient's door and the nurse just coming on duty asked the claimant if she had given this patient the medication and her insulin and the claimant replied that she had not done so. The other nurse remarked that the claimant had signed off that she had given it. The nurse just coming on duty apologized to the patient but the patient found it very bothersome.

There was a complaint regarding the claimant's failure to give pain medication. A patient's son asked the claimant for pain medication and she said she would get it as soon as possible. It was 30 minutes later and the claimant still had not provided the pain medication so the son asked her again and again the claimant said that she would get it as soon as possible. The son remained patient until he found the claimant in the kitchenette drinking Pepsi rather than getting the pain medication.

There were other complaints that the claimant provided inappropriate personal comments. She was talking with a lady who was telling the claimant about her breast reduction and the claimant said her husband thought that more than a handful was a waste. The warning also addressed co-worker's concerns of the claimant's care for the patients. Attached to the level two warning was a third level corrective action discipline for attendance. As a result, the claimant was placed on a probationary status.

The claimant received a second third level notice of corrective disciplinary action on July 23, 2010 resulting from additional patient complaints. The first complaint involved a patient and his girlfriend who believed the claimant was argumentative regarding a medication for the patient. There was an argument regarding a cholesterol medication that the claimant felt the patient was supposed to take but the girlfriend said it was not yet due. The claimant brought the medical chart into the room and said, "See, I'm right." The girlfriend corrected the claimant and again said it was not due. A third party audited the medical chart which indicated the cholesterol medication was not due at that time. During the altercation, the claimant said to the patient and his girlfriend, "Just so you know, I do have medical training." The girlfriend responded that she also had medical training. Ultimately the patient and his girlfriend requested the claimant no longer provide care for him since they believed it was more important for her to be right than to provide for the patient's needs.

The second complaint resulting in the third level warning resulted from a patient complaint that the claimant would not answer questions, she was impatient and she did not exhibit confidence in the level of care she provided. The patient and her daughter told the employer the claimant had provided care for the patient in 2009 and exhibited the same characteristics and they no longer wanted her to provide care. Consequently, the employer had no other choice than to discharge the claimant after she received her second 3rd level warning within a two-month period.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged on July 27, 2010 for violation of company policy. She had received two 3rd level corrective action notices within two months and the employer's policy provides for termination if an employee receives two 3rd level corrective action notices with a two-year period. The claimant's quality of care for her patients was becoming detrimental to the employer's business. The employer has met its burden. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated September 24, 2010, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs