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 hired on March 5, 2003, as a full-time charge nurse. The claimant received a copy of the employer's handbook and signed for its receipt on March 3, 2003. The claimant received a copy of job description at each evaluation. She last signed for its receipt on April 15, 2005.

On July 7, 2003, the employer issued the claimant a verbal warning for making a medication error. On July 7, 2004, she received a written warning for documenting she gave a treatment to a resident when she did not actually give the treatment. On May 28, 2004, the claimant received a verbal warning for failure to give kind and considerate care and a written warning for not completing a nursing assessment in a timely manner that resulted in the hospitalization of the resident. The employer issued the claimant a written warning on October 5, 2004, for failure to administer the medications that were ordered. On March 17 and May 31, 2005, the employer issued written warnings to the claimant for not completing her assigned work. On each of the reprimands the employer warned the claimant that further infractions could result in the claimant's termination.

On July 22, 2005, the employer scheduled the claimant to work a four-hour shift in order to complete one task, a nursing assessment of a new resident. A licensed practical nurse helped the claimant perform the assessment. Assessments usually take two to three hours. The claimant took four hours to complete the assessment, checked through the documents and signed her name. During the assessment the claimant performed other duties even though the employer told her to only work on the assessment. Later, the employer reviewed the assessment and found the pain assessment portion was not complete. The employer terminated the claimant on July 27, 2005, for not completing her assigned work.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes she was.

Iowa Code section 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. Henry v. Iowa Department of Job Service, 391 N.W.2d 731 (Iowa App. 1986). An employer has a right to expect employees to follow instructions and perform work as directed. The claimant disregarded the employer's right by repeatedly failing to complete her work after many warnings. The claimant's disregard of the employer's interests is misconduct. As such she is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's August 29, 2005 decision (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 has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

bas/pjs