

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARCIA L BROWN
Claimant

APPEAL NO. 08A-UI-07276-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 07/13/08 R: 01
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Marcia Brown filed an appeal from a representative's decision dated August 6, 2008, reference 01, which denied benefits based on her separation from Care Initiatives. After due notice was issued, a hearing was held by telephone on August 28, 2008. Ms. Brown participated personally. The employer participated by Jack Studer, Administrator; Crystal Whaley, LPN; and Angie Campbell, RN. Exhibits One through Five were admitted on the employer's behalf. The employer was represented by Jennifer Coe of TALX Corporation.

ISSUE:

At issue in this matter is whether Ms. Brown was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Brown was employed by Care Initiatives from June 11, 2007 until July 15, 2008. She worked full time as an LPN charge nurse at Westwood Nursing and Rehabilitation Center. She was discharged due to failures in the performance of her job.

Ms. Brown received a written warning on September 5, 2007 because she failed to do weekly skin assessments as required. It was busy during her shift and, by the time she found time to do the assessments, the residents had gone to bed. The September 5 warning also addressed the fact that she had left medications unattended on the med cart. Ms. Brown's next written warning was on October 16, 2007. The warning was due to the fact that she signed the resident's chart indicating that medications had been given when they had not been given. Ms. Brown believes she was called away to the telephone while administering medications. The resident's chart is not to be signed until the medications are actually given.

Ms. Brown received a written warning and three-day suspension on April 22, 2008 because she left three syringes on the med cart while the cart was unattended. The unattended syringes were observed by a state official during a survey of the facility. The decision to discharge was

prompted by Ms. Brown's failure to perform blood sugar testing on a resident on July 14, 2008. The resident, Evelyn, was returning to the facility after a three-day hospital stay. She returned with written orders concerning her care. She had orders to have her blood sugar tested before meals and at bedtime, the same as before she left for the hospital stay. Ms. Brown was notified at the start of her shift that Evelyn's orders were being completed. The nurse who completed the paperwork left it for Ms. Brown in the appropriate place.

Ms. Brown worked from 2:30 p.m. until 11:00 p.m. on July 14. She was there for Evelyn's dinner meal but did not test her blood sugar level before the meal. She did not test her levels until later in the evening when the family noted that there appeared to be something wrong with Evelyn. At that point, approximately 7:30 p.m., Ms. Brown did the testing and found that Evelyn needed additional insulin. When questioned by the employer, Ms. Brown indicated that she had been unable to locate the doctor's orders regarding Evelyn. She did locate the orders during the shift. The orders had been in the designated location.

Based on her prior warnings and the incident of July 14, the decision was made to discharge Ms. Brown. She was notified of the discharge on July 15, 2008.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). For reasons that follow, the administrative law judge concludes that disqualifying misconduct has been established. Ms. Brown was warned on September 5 about the importance of keeping medications locked in the medication cart. In spite of the warning, she left syringes unattended on the medication cart on April 22. She knew she was to lock the medication cart if she was called away to perform another task. Her failure of April 22 could have adversely impacted the employer's license, as it was observed during a state survey. Residents could potentially access an unlocked medication cart or remove items not secured within the cart.

Ms. Brown violated the employer's standards when she initialed that she had given medications in October of 2007 when she had not, in fact, given the medications. She knew she was not to initial the chart until the medications were actually dispensed to the resident. Since she had initialed that they had been given, later shifts would assume the accuracy of her notes and not know that the medications still needed to be given. Moreover, the failure to administer medications as ordered has the potential of negatively affecting a resident's health and safety.

Ms. Brown knew or should have known as of April 22 that her continued employment was in jeopardy. In spite of the warning, she failed to perform blood sugar testing as ordered. She knew Evelyn was diabetic and knew that she had to have her blood sugar tested periodically. If she had referred to the doctor's orders, she would have known that Evelyn was to continue having her blood sugar tested before meals and at bedtime. Ms. Brown was on her shift for five hours before Evelyn's blood sugar level was tested, and only then because her family thought there was a problem. During the five-hour interim, Ms. Brown had not taken any effective steps to either locate the doctor's orders or to contact the individual who might know where they were.

The administrative law judge concludes that the matters identified herein represented a pattern and practice of disregarding the employer's interests. She may not have intended to violate the employer's standards. However, her negligence was so recurrent as to manifest a substantial disregard for the employer's interests and standards. The employer operates a care facility for

individuals unable to care for themselves. The employer had the right to expect that medications will be dispensed as ordered and that staff will not leave medications and supplies accessible to residents. In a health care setting, four incidents of negligence within a period of ten months, with the potential to affect health and safety, are sufficient to establish disqualifying misconduct. For the reasons cited herein, benefits are denied.

DECISION:

The representative's decision dated August 6, 2008, reference 01, is hereby affirmed. Ms. Brown was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw