

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEATHER A GREEN

Claimant

APPEAL NO. 12A-UI-11931-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMMUNITY NURSING HOME INC

Employer

OC: 09/02/12

Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Community Nursing Home, filed an appeal from a decision dated September 28, 2012, reference 01. The decision allowed benefits to the claimant, Heather Green. After due notice was issued, a hearing was held by telephone conference call on October 30, 2012. The claimant participated on her own behalf. The employer participated by Administrator Lynn Nelson and DON Brandy Reintz.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Heather Green was employed by Community Nursing Home from June 26 until August 31, 2012 as a part-time CNA/CMA. On August 13, 2012, she had received a final written warning about her attendance. She had been late to work nine times in seven weeks due to transportation problems.

As part of her job duties, she must do “vitals” on two residents at least once per week. This includes taking temperature, blood pressure, pulse, lung sounds, and other items. The results are to be written in a book no later than Saturday of each week and then the information would be placed in the resident’s chart. On Sunday, August 26, 2012, DON Brandy Reintz noted Ms. Green had not done the vitals on her two residents for the prior week. The next day she reminded the claimant to do so. By the next day, the vitals were still not done or recorded and she was reminded again. On August 30, 2012, the DON told the claimant to have the vitals done by the end of the day and it was not done.

On August 31, 2012, the vitals information for the prior week was not in the book, and were overdue by a week. Administrator Lynn Nelson and Ms. Reints discharged the claimant when she came to work that day. Ms. Green had the information in her pocket and offered to put them in the book, but the fact they were a week late was the problem. An audit by the state or any other governing agency would have revealed a lack of the documentation. Under the

standards of care, if information is not recorded, "it did not happen." The taking and recording of the vitals is an essential part of the care of the dependent adults and failure to do this is a failure in care.

Heather Green has received unemployment benefits since filing a claim with an effective date of September 2, 2012.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant had been reminded two times to get the vitals information in the book and failed to do so. This was an essential function of her job that she failed to perform and did not provide any adequate explanation for failing to do so after two verbal reminders. She jeopardized the residents and well as the employer's license and exposed it to legal and financial liabilities.

The employer has the obligation to provide care for all residents in compliance with professional standards and state law. The claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of September 28, 2012, reference 01, is reversed. Heather Green is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw