

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JODI S FISCHELS
Claimant

APPEAL NO. 08A-UI-09078-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**FAIRBANK ASSISTED LIVING CNTR INC
PARKVIEW ASSISTED LIVING**
Employer

**OC: 08/31/08 R: 04
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated September 29, 2008, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 22, 2008. Claimant participated personally. Employer participated by Courtney Rochette, Administrator.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: Claimant last worked for employer on August 25, 2008.

Claimant was discharged on August 25, 2008 by employer because claimant forged a signature in an effort to order a prescription. Claimant faxed in a prescription request for a resident of the facility. The prescription was not needed by the resident. Claimant forged another nurse's name on the fax sent to the doctor. The fax asked the doctor to renew a prescription for hydrocodone. Claimant did not have authority to sign for the other nurse. Claimant did not have authorization to request a prescription for the resident. The handwriting of the forged signature matched that of the claimant. Claimant had access to the fax machine and the resident's file on the date in question. An investigation was ongoing concerning claimant's inappropriate handling of medication stemming from a June 3, 2008 incident.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The gravity of the incident, number of policy violations, and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning forgery and unauthorized ordering of medication.

The last incident, which brought about the discharge, constitutes misconduct because claimant attempted to obtain medication by forgery. Claimant intentionally forged another worker's signature to obtain drugs, which presumably were for her own use. Claimant abused her access to the residents by ordering a prescription that was not needed. Claimant's access to the fax and resident combined with the matching handwriting are sufficient to prove the forgery by a preponderance of the evidence. Employer need not prove their case beyond a reasonable doubt. Employer's burden is to prove that claimant, more likely than not, was the one who sent the fax. Employer has sufficient evidence to establish that claimant forged a signature to obtain drugs. This is a grave violation of the duty owed employer and the facility residents. Such behavior endangers both the residents and the employer's business. The administrative law

judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated September 29, 2008, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/kjw