

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

TRISHA P CHASE
1406 E 22ND ST #207
ATLANTIC IA 50022-2896

CARE INITIATIVES
C/O TALX UC EXPRESS
PO BOX 6007
OMAHA NE 68106-6007

Appeal Number: 06A-UI-04122-CT
OC: 12/25/05 R: 01
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Care Initiatives filed an appeal from a representative's decision dated April 6, 2006, reference 05, which held that no disqualification would be imposed regarding Trisha Chase's separation from employment. After due notice was issued, a hearing was held by telephone on May 2, 2006. Ms. Chase participated personally and offered additional testimony from Deborah McDermott. The employer participated by Janice Claussen, Charge Nurse; Larry Allen, Administrator; and Tammy Olesen, LPN. Exhibits One through Eight were admitted on the employer's behalf. The employer was represented by Lynn Corbeil of TALX UC eXpress.

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. Chase was employed by Care Initiatives, doing business as Atlantic Nursing & Rehab, from October 18, 2004 until March 15, 2006. She initially worked as an LPN but became a full-time restorative aide in March of 2005. At the time of separation, she was working part time as a restorative aide. She went to part-time status at her request on February 1, 2006 and was working Tuesday, Wednesday, and Friday. She was discharged because the employer felt she was not performing her assigned duties.

As a restorative aide, Ms. Chase was responsible for making sure residents received the exercises and assistance as recommended by the physical therapist. A service delivery record was prepared indicating the exercises to be performed and the frequency with which they were to be performed. On January 4, 2006, Ms. Chase was given a final warning because she was not providing restorative services as required or was not documenting her efforts. She was required to have either the administrator or his designee review the binder in which she kept the service delivery records on a daily basis. Ms. Chase was on probation for the three months following January 4. following three months.

The decision to discharge was based on the belief that Ms. Chase was either not providing the required services or was not documenting that she had provided the services. Resident "BV" did not receive restorative services on February 27 and there was no documentation as to why no services were provided. February 27 was a Monday and Ms. Chase did not work on Mondays. The resident was seen on February 27 and March 2. The resident should have been seen a minimum of three times during the week ending March 4 but was only seen twice. There was no explanation as to why the resident was only seen twice. Ms. Chase supervised other individuals who performed restorative services. She did not always make sure that those working under her performed the services or documented why they were not performed.

Another resident, "GL", did not receive all services during the week of March 6 through March 11. Although Ms. Chase did provide some services on March 10, she did not document why others were not provided. The resident received full services the following week. The final matter that triggered the discharge was the fact that no restorative services were performed for March 14 for "BV." Ms. Chase was present on this date and did perform services for "GL." At least one other employee reported that she spent time reading a magazine during her shift on this date. There were other occasions on which she would have to be redirected to her work.

The employer also has a "walk and dine" program for some of the residents. The purpose is to restore or maintain ambulation and feeding skills. Ms. Chase was expected to remain at the table with the residents to provide assistance until the meal was completed. She did not always remain with the residents as required. There was at least one resident who took longer than usual to complete his meal. Ms. Chase would sometimes leave him because she did not have the time to spend with him. She did attempt to remain in the area where he was seated.

Because she failed to provide services or documentation as required by the final warning of January 4, 2006, Ms. Chase was discharged on March 15, 2006. She filed an additional claim for job insurance benefits effective March 19, 2006. She has received a total of \$2,022.00 in job insurance benefits since filing her additional claim.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Chase was separated from employment for any disqualifying reason. 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). Ms. Chase was discharged for failing to perform her duties. She was responsible for providing restorative services and documenting her efforts and for making sure that those working under her did likewise. The administrative law judge is satisfied from the evidence that Ms. Chase spent time reading or socializing when she could have been providing services or reviewing charts to make sure others were providing necessary services. She was put on notice in January that she was on probation and that her job would be terminated if the problems in restorative services continued.

It appears that she performed fairly well for several weeks after the warning but then began to decline. As in any care facility, documentation is required as proof that necessary services have been performed or that there is justification for the failure to provide services. Ms. Chase's failure to provide the services, document her efforts, and make sure her subordinates were performing their jobs could have jeopardized the employer's license to do business. The failure to provide services could have jeopardized the residents' ability to function at the expected levels. For the above reasons, the administrative law judge concludes that Ms. Chase's failures constituted a substantial disregard of the employer's interests and standards. Accordingly, benefits are denied.

Ms. Chase has received benefits since filing her additional claim for job insurance benefits. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated April 6, 2006, reference 05, is hereby reversed. Ms. Chase 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. Ms. Chase has been overpaid \$2,022.00

cfc/pjs