

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

DEBORAH L RICHARDSON
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ASSISTED LIVING CONCEPTS INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-07378-CT
OC: 06/18/06 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:

Assisted Living Concepts, Inc. filed an appeal from a representative's decision dated July 10, 2006, reference 01, which held that no disqualification would be imposed regarding Deborah Richardson's separation from employment. After due notice was issued, a hearing was held by telephone on August 8, 2006. Ms. Richardson participated personally. The employer participated by Joy Cox, Administrator, and Mildred McNeefe, Associate Administrator. Exhibits One through Eight were admitted on the employer's behalf.

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. Richardson was employed by Assisted Living Concepts, Inc. from August 5, 2004 until June 21, 2006. She was initially hired to work as a personal services attendant. In January of 2006, she assumed duties of medication manager. She was assigned the duties of medication manager after she demonstrated competency in that area through testing.

Medications are dispensed from a cart that is moved to each resident's room when medications are given. Each resident's medications are contained in a cassette on the cart. The Medication Administration Record (MAR) is also maintained on the cart. The individual dispensing medication is to initial the MAR after medications are given. On May 2, 2006, Ms. Richardson received a final written warning because of two medication errors. On April 16 and again on April 30, she indicated she had given Tylenol to a resident when she had not. As a result of the errors, Ms. Richardson received additional training in May on dispensing medications. On May 31, Mildred McNeefe noted that Ms. Richardson dispensed a "prn" medication at 12:55 a.m. and, at the same time, noted in the "prn" log that the medication had been effective at 3:00 a.m. Ms. McNeefe admonished her against such actions.

The final incident that prompted the discharge occurred on June 12. Ms. Richardson indicated on the MAR that she had dispensed Vicodan to a resident at 4:15 a.m. The medication was to be given on a "prn", or as needed, basis. The resident had requested the Vicodan due to pain. In the "prn" notes, Ms. Richardson indicated that the Vicodan had been effective when the resident was checked at 6:15 a.m. One of Ms. Richardson's duties was to reconcile the narcotics inventory at the change of shift. The inventory conducted at the end of the shift on June 12 reflected that no narcotics had been given during Ms. Richardson's shift. She did not check the resident's cassette to determine if there were medications that were not given. Ms. Richardson was not at work between June 12 and June 21, 2006. She was notified of her discharge on June 21. The medication errors were the sole reason for the discharge.

Ms. Richardson filed a claim for job insurance benefits effective June 18, 2006. She has received a total of \$1,113.00 in benefits since filing her claim.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Richardson 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. Richardson was discharged because of medication errors. She was warned on May 2 that her errors were unacceptable and that she might be discharged if the errors continued.

In spite of the warning on May 2 and in spite of additional training, Ms. Richardson still committed a medication error on June 12. She knew she was not to initial the MAR until the medication was dispensed to the resident. Since the cart and MAR was with her at the resident's room, there would be no reason to initial the MAR before giving the medication. If Ms. Richardson was unsure as to whether a medication had been given, she could have checked the resident's cassette to make sure the medication was given. She had a second opportunity to correct the records when the narcotics were counted at the end of the shift. The

narcotics inventory sheet should have alerted her to the fact that the Vicodan had not been given.

Ms. Richardson's failure to administer the Vicodan resulted in the resident not receiving the pain relief requested. It also resulted in additional work for the employer in having to notify the resident's doctor that the medication had not been given. The administrative law judge does not believe Ms. Richardson deliberately and intentionally failed to administer medications. However, she was negligent on the three occasions identified herein. Negligence constitutes disqualifying misconduct if it is so recurrent as to manifest a substantial disregard for the employer's standards or interests. See 871 IAC 24.32(1).

As a care facility, the employer had the right to require that medications be given as directed by the resident's doctor. The employer also had the right to expect that the MAR would not be initialed unless and until the medication was given. The failure to administer prescribed medications had the potential of jeopardizing the resident's health and well-being. Inaccurate information on the MAR might cause another care provider to forego giving medication on the mistaken belief that it had already been administered. Although the record only establishes three incidents of negligence on Ms. Richardson's part, the incidents provided the potential for harm to residents. Moreover, the incidents occurred over a relatively short period of time. For the reasons cited above, the administrative law judge concludes that the three incidents of negligence identified herein are sufficient to establish a substantial disregard for the employer's interests and standards. Therefore, it is concluded that disqualifying misconduct has been established. Accordingly, benefits are denied.

Ms. Richardson has received benefits since filing her claim. 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 July 10, 2006, reference 01, is hereby reversed. Ms. Richardson 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. Richardson has been overpaid \$1,113.00 in job insurance benefits.

cfc/pjs