

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CRYSTAL M FUNK
Claimant

APPEAL NO. 13A-UI-06898-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 05/19/13
Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from the June 5, 2013 (reference 01) unemployment insurance decision that allowed benefits. After due notice was issued, a hearing was held on July 11, 2013. Claimant participated. Employer participated through David Mollenhoff, Human Resources Coordinator and was represented by Treve Lumsden of Equifax. Employer's Exhibits One through Eight were entered and received into the record.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a certified nursing assistant beginning on December 2, 1999 through May 13, 2013 when she was discharged. On May 6, the claimant was seen transferring a patient by herself. The patient was a two-person only transfer. Later that same day it was discovered that the patient had a dislocated right hip with a possible fracture. The employer determined that the claimant's solo transfer of the resident from his wheel chair to the toilet was the cause of his hip dislocation/fracture. When the claimant was asked who helped her transfer the patient, she could not provide the name of anyone. The employer questioned all the other aides and none of them indicated they had helped the claimant transfer the resident. The claimant knew that this resident was a two-person transfer and denied transferring the resident by herself.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). It was reasonable for the employer to require two-person transfers for this resident due to the fragile nature of the person's health. The claimant knew or should have known that this resident was a two-person only transfer.

The employer's exhibits clearly indicate that the claimant was seen by a nurse making the transfer alone, without the assistance of another certified nurse's aide as was required by the care plan. Such conduct was a violation of the care plan for the resident and resulted in injury to the resident. Under these circumstances the discharge was for substantial misconduct and benefits must be denied.

DECISION:

The June 5, 2013 (reference 01) decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant has not received any unemployment insurance benefits since her separation; hence there is no overpayment issue.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css