

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER A TWEED
Claimant

APPEAL NO. 13A-UI-09777-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HCI VNS CARE SERVICES
Employer

OC: 07/07/13
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Jennifer Tweed, filed an appeal from a decision dated August 12, 2013, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on September 30, 2013. The claimant participated on her own behalf. The employer, Care Services, participated by Human Resources Director Connie Goff, Team Director Megan Broughton and was represented by TALX in the person of Barbara Hamilton.

ISSUE:

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

FINDINGS OF FACT:

Jennifer Tweed was employed by Care Services from January 21, 2003 until May 17, 2013 as a part-time registered nurse. The employer converted to electronic charting in 2009 and the claimant was trained along with the rest of the staff.

Ms. Tweed was given a warning August 7, 2012, because she had failed to chart during the admission of a new client. She received a final written warning November 9, 2012, for several incidents. These were not charting resident care, gave the wrong dose of medication to a resident, did not change a catheter and did not chart the “terrible weekend” a resident had had, though she did mention it at a staff meeting. The warning told her any further incident could lead to disciplinary action up to and including discharge.

On May 9, 2013, Team Director Megan Broughton was doing an audit of patient records. She discovered Ms. Tweed had failed to chart a “level of care change” she had received during her shift the day before. This is critical charting so other staff knows what level of care is required for this patient. Ms. Tweed wanted to leave at the end of her shift and asked the nurse coming on for the next shift to do the charting for her. This is not allowed by policy and protocol.

Ms. Broughton updated the chart and reported to Human Resources Director Connie Goff. Ms. Goff reviewed Ms. Tweed's disciplinary history. Given the final written warning and the ongoing failure to chart a critical change of care plan, the claimant was discharged on May 9, 2013.

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 advised her job was in jeopardy as a result of her failure to correctly perform the essential functions of her job. She continued to fail in this area, not charting a change in care level and expecting a co-worker to perform that function for her because it was near the end of the shift and she had not completed her duties. The employer has the right to expect employees to perform their regular job duties and not attempt to move them to other people. This was not an isolated incident but the final event in the course of several instances of failing to do her job properly. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of August 12, 2013, reference 01, is affirmed. Jennifer Tweed is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs