

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTINE R BELL
Claimant

APPEAL NO. 13A-UI-03847-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 03/03/13
Claimant: Respondent (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Care Initiatives, filed an appeal from a decision dated March 21, 2013, reference 01. The decision allowed benefits to the claimant, Christine Bell. After due notice was issued, a hearing was held by telephone conference call on May 6, 2013. The claimant participated on her own behalf. The employer participated by DON Cindy Handley and was represented by TALX in the person of Tracey Taylor.

ISSUE:

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

FINDINGS OF FACT:

Christine Bell was employed by Care Initiatives from July 26, 2011 until September 1, 2012 as a full-time LPN. She received a verbal warning December 28, 2012, for signing off that a treatment had been given when it had not. On February 17, 2013, she received a three-day suspension for having two medication errors in one week, not assisting CNAs when requested, not wearing her headset so she could be contacted and not supervising residents in the dining room.

The three-day suspension was served February 18, 19, and 20, 2013. The claimant was aware the next step in the disciplinary action would be discharge. She was notified by DON Cindy Handley on February 22, 2013, there had been complaints from the family members of two residents about her conduct. One felt she had been “snippy” when she would not answer questions from the family of a new resident about the facility. The other complaint was because the family felt his mother was being “mistreated” by the claimant not treating her “kindly.”

The claimant’s suspension was extended pending investigation. This involved more in depth conversations with the family members. No specifics as to the claimant’s alleged conduct were provided by the people interviewed except general accusations of being “snippy” and “rude” and “not answering questions.” The employer never identified the family members because it felt it might be a HIPPA violation.

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 employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). In the present case the employer has not provided any specific information about the complaints and did not even identify the complainants so Ms. Bell could respond to a specific situation and allegation because of HIPPA considerations. But the administrative law judge does not understand how the complaints from a family member would constitute a HIPPA violation. No private medical information about the resident was being disclosed, only what family members had seen and heard.

If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which she was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

DECISION:

The representative's decision of March 21, 2013, reference 01, is affirmed. Christine Bell is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/tll