

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTINE M CRAIN
Claimant

APPEAL NO. 09A-UI-19260-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

**Original Claim: 11/22/09
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Care Initiatives filed a timely appeal from an unemployment insurance decision dated December 14, 2009, reference 01, that allowed benefits to Christine M Crain. Due notice was issued for a telephone hearing to be held February 2, 2010. At the time of the hearing, it was continued to February 4, 2010, in order for the parties to complete exchanging documents. Ms. Crain participating on her own behalf. Administrator Cory Luft and Business Office Manager Cory Faullencamp testified for the employer, which was represented by Josh Burrows of Johnson & Associates. Claimant Exhibit A and Employer Exhibit 1 were admitted into evidence.

ISSUE:

Was the claimant discharged for misconduct in connection with her employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Christine M. Crain was employed by Care Initiatives from November 20, 2008, until she was discharged November 23, 2009. She last worked as a licensed practical nurse. Ms. Crain was discharged for allegedly signing off on a nebulizer treatment being given to a resident of the facility when the treatment had not been given. Ms. Crain had given the treatment as indicated in her charting.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in this record establishes that the claimant was discharged for misconduct in connection with her employment. It does not.

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. The employer provided no first-hand witnesses. The claimant's sworn testimony contradicted the hearsay evidence given by the employer's witnesses. The director of nursing, the person most directly responsible for the discharge, was not called to testify.

Long ago, the Supreme Court of Iowa ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that that evidence would lay open the deficiencies in the party's case. See Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). Mindful of the ruling in Crosser, and noting that the claimant presented direct, first-hand testimony while the employer relied upon second-hand witnesses, the administrative law judge concludes that the employer has not met its burden of proof. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated December 14, 2009, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw