

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KARLA J LYDDON
Claimant

APPEAL NO. 14A-UI-00590-H2

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 12/01/13
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 9, 2014, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued an in-person hearing was held on March 13, 2014 at Creston, Iowa. Claimant participated and was represented by Richard L. Wilson, Attorney at Law. Employer did participate through Lori Harvey, Administrator, Rayma Riepperger; MDS, Maggie Parrish, Nurse Manager and was represented by David Williams of Talx UCM Services. Claimant's Exhibits One through Four were entered and received into the record. Employer's Exhibit A was entered and received into the record. At the completion of testimony on March 13, 2014 the record was held open so the employer could submit a copy of the claimant's response to a July 2013 disciplinary notice. Mr. Williams submitted the document to claimant's counsel and to the agency via e-mail on March 14, 2014. No objection was filed by the claimant by close of business on March 21, 2014 thus the e-mailed document was included as part of Employer's Exhibit A, which was entered and received into the record, and the record was closed.

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 the social services coordinator beginning on October 2, 2000 through December 5, 2013 when she was discharged. The claimant was discharged for alleged failure to complete documentation. The claimant has no medical background nor is she qualified to act as a social worker. When the former director of nursing left employment, the claimant was assigned to complete a "PASARR" for each new resident who came into the facility directly from their home. When a new resident arrived from a medical facility or a hospital, the hospital or medical facility nursing staff would complete the PASARR and send it with the resident. The claimant completed at most three PASARR during her employment and was never able to complete it without help from the administrator, who is also a nurse, because she simply lacked the medical knowledge necessary to do so.

The claimant also was unable to accurately indicate what behaviors changed in a resident due to medication changes. Again, the claimant simply has no medical background that would qualify her to make those determinations.

Ms. Harvey became the new administrator in August 2012. Prior to Ms. Harvey becoming the claimant's supervisor, the claimant had excellent performance evaluations. Ms. Harvey was the person who assigned the claimant to complete the PASARR that previously had been completed by a licensed nurse. The claimant did the best she could, but could not always complete the form because she simply lacked the background to do so. The PASARR are now being completed by the administrator, (a licensed nurse) and the current director of nursing. The claimant's last warning was in July 2013 when the family member of a resident complained about her. None of the claimant's actions led to any negative consequences when the employer underwent an evaluation by the Department of Inspections and appeals.

The claimant performed her job to the best of her ability, but was not able to meet the new administrator's expectations. The claimant did not intentionally fail to complete any documentation or records.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. *Kelly v. IDJS*, 386 N.W.2d 552 (Iowa App. 1986). The administrative law judge is not persuaded that the claimant was ever the correct person to be required to complete the PASARR as she has no medical training or background. Under such circumstances the administrative law judge concludes that the claimant attempted to the best of her ability, but was simply not able to meet the employer's expectations.

Additionally, the claimant may have made some additional documenting omission, but that was not due to any negative intention on her part, it was simply an error. Under these circumstances the administrative law judge concludes that the claimant did attempt to perform the job to the best of her ability but was unable to meet the new employer's expectations, no intentional misconduct has been established, as is the employer's burden of proof. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Accordingly, no disqualification pursuant to Iowa Code § 96.5(2)a is imposed.

DECISION:

The January 9, 2014, (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs