

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**DANA K PETERSON
15186 – 300TH ST
MASON CITY IA 50401**

**GOOD SHEPHERD GERIATRIC
CENTER INC
PO BOX 1707
MASON CITY IA 50402**

**JACKIE CONWAY
ATTORNEY AT LAW
PO BOX 1567
MASON CITY IA 50401**

**Appeal Number: 05A-UI-02453-CT
OC: 01/30/05 R: 02
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Dana Peterson filed an appeal from a representative's decision dated March 4, 2005, reference 02, which denied benefits based on her separation from Good Shepherd Geriatric Center, Inc. After due notice was issued, a hearing was held by telephone on March 31, 2005. The hearing was recessed and concluded on April 8, 2005. Ms. Peterson participated personally and Exhibits A through Q were admitted on her behalf. The employer participated by Diane Horning, President; Julie Lucas, RN; Lois Ziron, RN; Toni Nehls, RN; Cindy Paulsen, RN; Janice Hedrick, CNA; and Sheri Brunsting, RN. The employer was represented by Jackie Conway, Attorney at Law. Exhibits One through Four were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Peterson was employed by Good Shepherd from August 6, 2002 until January 30, 2005 as a full-time certified nursing assistant. She was discharged after receiving a series of disciplinary actions. The primary reason for the discharge was her attendance. In her evaluation given May 11, 2004, Ms. Peterson's attendance was rated between "needs improvement" and "unsatisfactory." In a follow-up evaluation in August of 2004, her attendance was rated as "unsatisfactory."

Ms. Peterson was 30 minutes late for work on August 27 and 50 minutes late on October 2, 2004. She called at the start of her shift to report that she would be approximately 15 minutes late on November 11. She was approximately 45 minutes late on November 24 because she overslept. The final incident that triggered the discharge occurred on January 28, 2005. Ms. Peterson was scheduled to be at work at 6:00 a.m. Intended absences are to be reported at least one hour before the start of the shift. When Ms. Peterson had not arrived by 6:05 a.m., the employer called her home and left an answering machine message. The call was returned to the employer at approximately 6:15 a.m. The employer's telephone operates on a six-line rotary where incoming calls are routed to the next available line. The nurse who spoke to Ms. Peterson on January 28, Lois Ziron, carries a portable telephone with her. No calls had been received from Ms. Peterson prior to the employer calling her home on January 28. In her handwritten statement on the discharge notice, Ms. Peterson did not allege that she had tried unsuccessfully to report her intended absence before the employer called her. The employer considered the absence to not have been properly reported and, therefore, discharged Ms. Peterson on February 1, 2005.

Ms. Peterson had received written warnings regarding her attendance. She had also received warnings for serving an incorrect portion size to a resident and for extending her break by ten minutes. Ms. Peterson and others received warnings when an inspection of the floor revealed beds not made and items on chairs in residents' rooms.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Peterson was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving job insurance benefits if she was excessively absent on an unexcused basis. Absences which are for reasonable cause and which are properly reported to the employer are considered excused absences. Tardiness in reporting to work is considered a limited absence from work.

Ms. Peterson missed a substantial amount of time from work during the nine-month period considered by the employer. The bulk of her absences represented full shifts or occasions on which she left work early. The evidence failed to establish that she missed full shifts for reasons that would render the absences unexcused. The evidence failed to establish that she ever left work early without first obtaining permission to do so. For the above reasons, the absences for a full shift and the occasions of leaving early are not acts of misconduct.

Ms. Peterson had four occasions of tardiness from August 27 through November 24. She knew from the warnings she received and the comments on her evaluations that her attendance was unsatisfactory and could result in her discharge. In spite of the warnings, Ms. Peterson failed to timely report her absence of January 28. She contended that she started trying to call the employer five minutes before her shift was to start but the line was busy. The administrative law judge finds it difficult to believe that all six lines to the employer's business were busy. Moreover, Ms. Peterson did not indicate on the termination notice that she had tried calling in before the employer left a message on her answering machine. The evidence does not establish any good cause for the failure to timely report the absence and, therefore, it is unexcused.

Ms. Peterson accumulated five occasions of unexcused absence during a period of five months. The administrative law judge considers this excessive. Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect. Timeliness in reporting to work is especially crucial in a care facility where an employer must have sufficient staff to provide the necessary care to residents. For the reasons stated herein, the administrative law judge concludes that disqualifying misconduct has been established and benefits are denied. In concluding that misconduct has been established, the administrative law judge has considered only Ms. Peterson's attendance as the other matters represented isolated instances of failure in good performance and not intentional misconduct.

DECISION:

The representative's decision dated March 4, 2005, reference 02, is hereby affirmed. Ms. Peterson was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/pjs