

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROGER E HUTCHINSON
Claimant

APPEAL NO. 10A-UI-00203-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRYSTAL PROPERTIES INC
Employer

OC: 02/01/09
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Roger Hutchinson filed an appeal from a representative's decision dated December 30, 2009, reference 03, which denied benefits based on his separation from Crystal Properties, Inc. After due notice was issued, a hearing was held by telephone on February 15, 2010. The hearing was recessed to allow the completion of discovery. The hearing reconvened on April 12, 2010. Mr. Hutchinson participated personally and was represented by Katie Naset, Attorney at Law, who offered additional testimony from Emily Haymond. The employer participated by Inde Miller, Administrator, and was represented by Douglas Fulton, Attorney at Law. The administrative file was admitted as Division Exhibit I.

ISSUE:

At issue in this matter is whether Mr. Hutchinson was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Hutchinson was employed by Crystal Properties, Inc. from August 18 until December 3, 2009 as a full-time CNA. He was discharged based on an allegation that he improperly transferred a resident, causing the resident to fall and sustain an injury to her elbow. He was also discharged because he failed to report the incident or the injury.

The employer's staff is required to use a Hoyer lift and two people to transfer the resident in question. It was reported that Mr. Hutchinson attempted to transfer the resident by himself on November 28 and that both he and the resident fell. At some point, the resident was noted to have a bruise on her left elbow. An aide who witnessed the incident reported that Mr. Hutchinson told her not to report it. He testified that the only time he transferred the resident on November 28 was when he assisted another aide in getting her to bed. When questioned as to whether the resident was fully oriented, the employer indicated that she was "not a good historian." She did, however, identify Mr. Hutchinson by name and description as the person who dropped her. After an investigation, it was determined that Mr. Hutchinson failed to follow

the resident's care plan with respect to the manner in which she was transferred. Therefore, he was discharged on December 1, 2009.

REASONING AND CONCLUSIONS OF LAW:

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). Mr. Hutchinson was discharged based on an allegation that he improperly transferred a resident, causing the resident to fall and sustain an injury. The employer's evidence consists of written statements and hearsay testimony. However, the administrative law judge found the employer's evidence more persuasive.

Although the employer indicated that the resident was not a good historian, she was able to name Mr. Hutchinson and to provide a description of him as the person who dropped her. The aide who witnessed the incident was relatively new on the job and did not have any history of animosity with Mr. Hutchinson. Therefore, there would seemingly be no reason for her to fabricate allegations against him. Based on the foregoing, the administrative law judge concludes that he did improperly transfer the resident, thereby causing her to fall and injure her elbow. By not following the resident's care plan with respect to the manner of transferring her, Mr. Hutchinson placed her care and well-being in jeopardy. His conduct had the potential of subjecting the employer to legal liability in the event her injuries had been more severe. He also compromised the employer's license to do business.

Mr. Hutchinson's conduct was clearly contrary to the employer's interest and standards. For the reasons cited herein, it is concluded that disqualifying misconduct has been established and benefits are denied.

DECISION:

The representative's decision dated December 30, 2009, reference 03, is hereby affirmed. Mr. Hutchinson was discharged for misconduct in connection with his employment. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css