

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KARMA K ELLARD**  
Claimant

**APPEAL NO. 07A-UI-07872-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEARTLAND HEALTH MANAGEMENT**  
Employer

**OC: 07/15/07 R: 04  
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Karma Ellard filed an appeal from a representative's decision dated August 13, 2007, reference 01, which denied benefits based on her separation from Heartland Health Management. After due notice was issued, a hearing was held by telephone on September 4, 2007. Ms. Ellard participated personally. The employer participated by Sheila Matheney, Administrator, and Rosetta Bright, Social Services Director. Exhibits One through Eight were admitted on the employer's behalf.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Ellard was employed by Heartland Health Management from March 13, 2006 until July 19, 2007. She worked full time as a registered nurse at Arbor Court, a residential care facility. She was discharged after receiving a series of disciplinary notices.

Ms. Ellard received a warning on February 19 because she failed to chart or notify the next shift of a change in a resident's condition. She received a warning on March 20 after a resident was not allowed to have a cigarette break. New carpeting was being installed at the time and staff had been advised to avoid walking in the area until the project was completed. Ms. Ellard believed allowing the resident to have a cigarette break at that time would have required the resident to walk in the area being carpeted.

Ms. Ellard received another warning on May 14 because she failed to fully assess a resident after the resident struck her head during a fall. She also failed to perform all of the required neurological checks to make sure there was no damage as a result of the head injury. She also failed to complete the necessary paperwork concerning the injury. The warning of May 14 also

addressed the fact that Ms. Ellard failed to assess a resident who complained of having a temperature.

On June 19, Ms. Ellard was directed to give a laxative suppository to a resident. The nurse from the prior shift told her the director of nursing (DON) requested the suppository because the resident was going to the bathroom frequently but only producing a watery stool. Ms. Ellard disregarded the directive because she felt it was contrary to the facility's usual procedure. She did not perform a rectal exam of the resident to determine if she was impacted. As a result of her failure to follow the instructions, Ms. Ellard was suspended for two days. She was advised that any further incidents would result in termination of her employment.

The final incident that prompted the discharge occurred on July 15. At approximately 7:30 p.m., a resident by the name of Jim requested a cigarette. Either his ex-wife or a family member had brought cigarettes in for him. Residents' cigarettes are maintained in a drawer at the nurse's station. Ms. Ellard told the nursing assistant assigned to Jim that he could not smoke because he was wearing a nicotine patch. Jim had not been wearing the patch since his admission date of July 10, 2007. The fact that he had refused the patch was documented in the medication administration records (MAR), which Ms. Ellard had access to. Between 7:30 and 8:00 p.m., Ms. Ellard spoke to the social services director, Rosetta Bright, concerning Jim's request for cigarettes. She told Ms. Bright that Jim was taking other resident's cigarettes and threatening to hit them with his cane. Ms. Bright told her that Jim was not on a smoking schedule and to give him a pack of cigarettes. At approximately 8:00 p.m., the DON returned a call to Ms. Ellard. She instructed Ms. Ellard that Jim was not on a smoking schedule and to give him the pack of cigarettes.

Ms. Ellard did not give Jim any cigarettes and locked his cigarettes in the medication room. She did not tell other staff what the DON and Ms. Bright had said regarding Jim's ability to smoke. Jim returned to the nurse's station at approximately 9:00 p.m. and requested a cigarette. When he was told the cigarettes had been locked away and that the aide did not have a key, he became agitated and struck the desk with his cane. Ms. Ellard did not check Jim's records to determine if he was still using a patch. She did not physically check him to determine if he was wearing a patch. As a result of her refusal to comply with the directives given her by the DON and Ms. Bright, Ms. Ellard was discharged on July 19, 2007.

#### **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). For reasons that follow, the administrative law judge concludes that the employer has satisfied its burden of proof. Ms. Ellard knew or should have known that her continued employment at Arbor Court was in jeopardy based on the warnings she received on February 19, March 20, and May 14. She was clearly on notice that she was to follow instructions given her by superiors.

In spite of the prior warnings, Ms. Ellard failed to administer a suppository as directed. She knew the directive came from the DON. However, she decided to disregard the directive without first speaking with the DON to discuss why the usual procedure was not being followed. As it turned out, the resident was impacted. Ms. Ellard's failure to administer the suppository could have compromised the resident's health and well-being. She received a written warning and two-day suspension as a result of not administering the suppository as directed. In spite of the warning, Ms. Ellard again failed to follow instructions on July 15.

Jim had every right to have cigarettes on July 15. If Ms. Ellard had checked his records, she would have noted that he had not been wearing the patch for several days leading up to July 15. Moreover, she was told by the DON and the social services director on July 15 to give Jim the cigarettes. The directives from these two should have been sufficient to at least cause Ms. Ellard to double-check whether Jim was, in fact, wearing a nicotine patch. The fact that a patch had been prescribed by the doctor and appeared on the doctor's orders does not mean it was actually being worn. Residents have the right to refuse medication. Ms. Ellard did not check the MAR to see if Jim had refused the nicotine patch prescribed by the doctor.

Ms. Ellard's refusal to give Jim his cigarettes caused him to become agitated and physically aggressive. In spite of knowing that Jim was becoming agitated, was taking cigarettes from other residents, and was making threats against others, Ms. Ellard still did not give him the cigarettes that may have resolved his issues. She not only compromised Jim's mental well-being, she compromised the safety of those around him. Her actions deprived Jim of the cigarettes he had every right to have.

After considering all of the evidence, the administrative law judge concludes that Ms. Ellard was discharged due to a substantial disregard of the employer's interests and standards. As such, benefits are denied.

**DECISION:**

The representative's decision dated August 13, 2007, reference 01, is hereby affirmed. Ms. Ellard 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.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs