

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD R FAIRCHILD
Claimant

APPEAL NO. 10A-UI-03189-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 01/24/10
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Care Initiatives filed an appeal from a representative's decision dated February 19, 2010, reference 01, which held that no disqualification would be imposed regarding Richard Fairchild's separation from employment. After due notice was issued, a hearing was held by telephone on April 16, 2010. Mr. Fairchild participated personally. The employer participated by Jaci Garden, Director of Nursing, and by Tabitha Hole and Emily Givens, RN's. The employer was represented by Lynn Corbeil of TALX Corporation. Exhibits 1 through 18 were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Fairchild 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. Fairchild was employed by Care Initiatives from June of 2008 until January 27, 2010 as a full-time RN. His discharge was prompted by conduct that occurred on January 25, 2010 when he failed to follow and to clarify doctor's orders for a resident who was being readmitted following a hospital stay. He was to flush the "infusaport" on a resident but failed to do so. The procedure required a sterile solution and a needle, which are maintained on both of the employer's medication carts. Mr. Fairchild knew how to perform the flushing procedure. When questioned as to why he had not performed the procedure on January 25, he indicated that he could not find the necessary supplies. The supplies were, in fact, available.

Mr. Fairchild also failed to start the resident on two antibiotics prescribed by her doctor. He told the employer the medications were not available. He could have contacted the pharmacy to have them delivered, on an emergency basis if necessary. He did not do so. He was asked by another nurse to check with the doctor to clarify the care instructions regarding the resident's feet but did not check.

In making the decision to discharge, the employer also considered warnings Mr. Fairchild had received in the past. On January 13, 2009, he received a verbal warning because of four medication errors in six months. On one occasion, he administered the same medication twice. On another occasion, he pulled the incorrect medication. On another occasion, he incorrectly transcribed an order for medication. The fourth error involved administering the wrong medication to a resident. Mr. Fairchild received a written warning on April 22, 2009 because he failed to transcribe the fact that lab work had been ordered on a resident who was starting a new medication. Therefore, the lab work was not done. He received a written warning on June 10, 2009 due to errors in transcribing orders for medications.

Mr. Fairchild received a suspension and final warning on December 2, 2009 after he failed to discontinue a medication as ordered. The order was given on November 23 but had not been discontinued as of November 28. He acknowledged during the hearing that he did not get the task done. He had noted to the employer at some point that he felt overwhelmed with the amount of work he had to perform. He acknowledged during the hearing that his workload was lighter after December of 2009. Based on the prior warnings and the failures of January 25, Mr. Fairchild was discharged on January 27, 2010.

Mr. Fairchild filed a claim for job insurance benefits effective January 24, 2010. He has received a total of \$982.00 in benefits since filing the claim.

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. Fairchild was discharged for repeated errors and failures in the performance of his job. The administrative law judge does not believe his errors were intentional. However, they do reflect a lack of the level of due care the employer had the right to expect. Medication errors have the potential of jeopardizing a resident's health and well-being. By not following established procedures for making sure the correct medications were given to the correct resident, Mr. Fairchild exposed the employer to legal liability had the errors resulted in injury.

Mr. Fairchild also failed to correctly and accurately transcribe doctor's orders so that other staff would be aware of what was necessary to provide appropriate care. By not making sure labs were ordered, he allowed for the possibility that a deterioration in the resident's health would go undetected. By not accurately transcribing what medications were ordered or discontinued, he allowed for the possibility that needed care would not be provided. Mr. Fairchild was amply warned that his performance was jeopardizing his continued employment. In spite of the warnings, he continued to commit errors or fail to perform what was required of him. Inasmuch as the necessary supplies and resources were available to implement the doctor's orders of January 25, there was no justification for not following the orders.

After considering all of the evidence, the administrative law judge concludes that Mr. Fairchild engaged in a course of conduct he knew or should have known was contrary to the employer's standards. Even if the administrative law judge were to conclude that each of the infractions identified herein represented negligence, the negligence was so recurrent that it manifested a substantial disregard of the employer's standards and interests. Not only did his actions expose the employer to potential legal liability in the event of harm to a resident, it also jeopardized the

employer's license to do business. For the reasons cited herein, it is concluded that disqualifying misconduct has been established and benefits are denied.

Mr. Fairchild has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated February 19, 2010, reference 01, is hereby reversed. Mr. Fairchild 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. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Fairchild will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css