

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSHUA J STEELE
Claimant

APPEAL NO. 13A-UI-09624-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HOSPITAL
Employer

**OC: 07/14/13
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 14, 2013, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued a hearing was held on September 25, 2013. Claimant participated and was represented by Tara Z. Hall, attorney at law. Employer participated through Angie Hoover, and (representative) Bunny Morrison. Employer's Exhibit One was entered and received into the record. Claimant's Exhibit A was entered and received into the record.

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 a staff nurse beginning on December 19, 2011 through July 18, 2013, when he was discharged. The claimant was discharged for events that occurred during the night shift of July 16 to the morning of July 17. The claimant was caring for a patient in the intensive care unit who had a breathing tube in place. Per the physician's order the claimant was to keep the patient sedated so she would not pull out her breathing tube. The claimant was the newest and least experienced nurse in the unit and was required to take instruction from other nurses particularly the charge nurse. The doctor's orders provided up to 150 units of the sedating drug could be given to the patient. The claimant was inaccurately charting the amount of medication running through her IV. The claimant also failed to chart that the patient was even receiving the medication. The charge nurse noticed that the patient was waking up moving her arms and increased the dosage of medication from 50 units to 75 units. She had more experience than the claimant and specifically told him the patient needed additional sedation. The claimant then turned the medication down to 50 units and did not chart it. Because the claimant kept turning down the sedation medication the patient pulled her breathing tube out necessitating the physician and respiratory therapy be called immediately to put it back in. The patient pulled the tube out because the claimant did not give her the proper level of sedation, ignored his more experienced charge nurse instructions and failed to chart correctly when he did. The claimant's actions are all not in the employer's best interests. The claimant did not

follow the physician's instructions when the doctor came in to put the tube back in. The claimant administered a paralyzing drug before the doctor told him he was ready to do so. The claimant's charge nurse was at the bedside of the patient after she pulled out the breathing tube and told the claimant to get the crash cart. The claimant told the charge nurse to leave the room and let him take care of the patient. The claimant's coworkers, his fellow nurses were so concerned with the claimant's unacceptable behavior and level of care they immediately reported his actions to the employer who then made a report to the nursing board. The claimant should have followed the instructions given by the charge nurse, should have charted accurately and should have let the doctor make the decisions on when to administer the drugs. The employer considered the claimant a danger to patient safety and discharged him.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The employer has a right to expect their employees to follow safe nursing practices. One of the most basic requirements for a nurse is to chart. The claimant failed to do so for the patient. The claimant ignored more experienced nurses who were specifically telling him the sedation was too low. The nurses

changed the sedation to increase it and the claimant lowered it. The claimant was wrong as the patient pulled out the tube. The claimant told the charge nurse to leave a room. He had no business instructing a charge nurse to leave a patient who had just pulled out a breathing tube because he was not insuring the right level of sedation. The combination of the claimant's actions on the July 16-17 shift indicate a disregard of the employer's best interest, which is patient safety and do amount to substantial misconduct sufficient to disqualify the claimant from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The August 14, 2013, (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs