

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARITY ANDREWS
Claimant

APPEAL NO: 14A-UI-13109-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

GYP SUM CREEK HEALTHCARE INC
Employer

OC: 11/23/14
Claimant: Respondent (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 11, 2014, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 16, 2015. The claimant did not respond to the hearing notice by providing a phone number where she could be reached at the date and time of the hearing as evidenced by the absence of her name and phone number on the Clear2There screen showing whether the parties have called in for the hearing as instructed by the hearing notice. The claimant did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Colette Livingston, Director of Clinical Services; Jessica Hudson, Business Office Manager; and Mike Bostwick, Administrator in Training; participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time MDS Coordinator/Care Plan Nurse for Gypsum Creek Healthcare from June 7, 2013 to November 19, 2014. She was discharged for failing to perform her job to the employer's expectations even though she was capable of doing so.

The claimant was responsible for MDS (minimum data sets) which are submitted by the employer to the state and federal government in order to be paid for the care they provide. She was also responsible for the patient care plans. Those plans let the rest of the staff know of the patient's dietary, respiratory, wound, or other therapies, and activities of daily living, such as grooming, bathing, and dressing.

On August 19 and 20, 2013, the employer brought in staff from its sister skilled nursing facility to work with the claimant and help her complete various tasks and do her job. On September 10, 2013, the employer had a sit down meeting with the claimant to educate and inform her of the delegation of her duties, what tasks she was responsible for performing, and the employer's

expectations. On December 18, 2013, there was a further discussion with the claimant about her performance and the employer provided her with additional training with Director of Clinical Services Colette Livingston and others who provided additional education and coaching to the claimant to improve her performance. On January 23, 2014, further education and review of the claimant's performance with regard to keeping her tasks current was held because she was not keeping her care plans or MDS (minimum data sets) up to date. On February 25 through 27, 2014, the employer sent employees from its sister skilled nursing facility in to further train the claimant. On April 16 and 17, 2014, the employer conducted further documentation training because the claimant's tasks and care plans continued to be overdue and incomplete. On April 30, 2014, the employer documented that the claimant was not following through with the education provided in risk management meetings that involved updating care plans, some of which the claimant failed to attend. On June 13, 2014, the employer noted the claimant continued to lack updates of her care plans. On June 30, 2014, the employer documented that the claimant failed to update her care plans. On July 17, 2014, the employer indicated the need for regular meetings with the claimant and that numerous care plans were not updated. On July 24, 2014, Ms. Livingston spent a week in the claimant's facility working with her on keeping her care plans updated and coding the MDS correctly. There were also issues with Medicare billing and the claimant's failure to use the employer's triple check system. On September 10, 2014, the employer held a meeting with the claimant and again stated its expectations. On September 25, 2014, following a compliance visit from the compliance team the claimant was again coached on her care plans. On November 6, 2014, the claimant was not prepared for the Triple Check meeting for MDS. On November 19, 2014, Ms. Livingston ran the claimant reports on late MDS submissions. The employer's goal on late submissions is three percent per month or less. The claimant's results for August 2014 were 25 percent late; September 2014 results were 23.91 percent late; and October 2014 results were 35.29 percent late. After reviewing those statistics, and all of the coaching, education and retraining sessions, the employer terminated the claimant's employment November 19, 2014.

The employer believes the claimant was fully capable of performing the job as she had done so at some points throughout her tenure with this employer and had experience doing the same job at another skilled nursing facility in town. The claimant left that facility and came to work for the employer with a friend who worked as the DON. While the claimant's friend was the DON she performed her job to the employer expectations but after the DON left the claimant's attitude changed, she often closed and locked her door, and she did not participate with the team.

The claimant reported vacation pay for the week ending November 29, 2014, and wages and vacation pay for the week ending December 6, 2014. She did not make a weekly claim after that date and consequently there is no overpayment of unemployment insurance benefits.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

During the 17 months the claimant worked for the employer, she was coached, retrained and educated on at least 14 separate occasions. The claimant was capable of performing her job to the employer's expectations, as she did several times throughout her employment, but simply chose not to do so a majority of her time with the employer. She isolated herself from her team and failed to participate in several meetings or engage in day to day interactions with her teammates, after her friend, who was the DON, left her position with the employer.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The December 11, 2014, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs