

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBORAH MCHENRY
Claimant

APPEAL NO: 13A-UI-11429-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SHEPHERD GERIATRIC CNTR INC
Employer

OC: 09/15/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 7, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 4, 2013. The claimant participated in the hearing. Shari Dunn, DON; Katie Byerly, Assistant DON; Shelly Roberts, Human Resources; and Vicki Murl; Union Steward participated in the hearing on behalf of the employer. Claimant's Exhibit A was admitted into evidence.

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 charge nurse for Good Shepherd Geriatric Center from July 25, 2011 to September 17, 2013. She was discharged after the employer received written complaints from residents about her conduct and work performance.

On September 10, 2013, a nurse's note indicated she had three resident complaints about the claimant. Two residents stated the claimant failed to give them their medication and another complained that when a fourth resident appeared upset and tearful the claimant "got after" her for crying.

One of the residents receives Premarin cream every night. The nurse on the preceding night had used the last of the tube of cream. The claimant then worked the three subsequent nights and when the first nurse returned on the fourth night the new tube of cream was still sealed in its packaging but the claimant had signed off September 10, 2013, indicating she had given the resident the cream. That nurse's memo also contained an accusation by another resident that the claimant deliberately made him wait until he was last before she would give him his medication.

On September 12, 2013, a nurse wrote a memo stating the care plan coordinator was approached by a resident stating the claimant did not give her the two inhalers she was supposed to have the previous evening. That resident also complained the claimant did not give her the eye drops she requested and when she asked the claimant about the eye drops the claimant responded by saying, "Forget it. Go to bed."

The employer conducted the claimant's annual performance evaluation in August 2013 and had three nurse supervisors review the claimant because the claimant had an issue with one of the nurse supervisors and the employer did not want the claimant to feel the evaluation was unfair. The three nurse supervisors all rated the claimant below satisfactory and needing improvement in the areas of communication with residents and co-workers, medication error issues and observation of residents. It was noted that the claimant had a negative attitude toward residents and staff, needed to be more positive with residents and staff, and refrain from being so "abrupt" with residents, staff and family members (Claimant's Exhibit A). The evaluators also found the claimant did not promptly administer needed pain medication.

Overall the evaluators scored the claimant as needing improvement in the areas of quality resident care; supervision of non-supervisory personnel, and, on one review especially, desirable personal/professional characteristics. The employer told the claimant it would reevaluate her in two months and was hoping to see the needed changes but after the complaints of September 10 and 12, 2013, and not noticing improvement in the areas previously discussed and reviewed, the employer terminated the claimant's employment September 17, 2013.

The claimant received a written warning June 16, 2013, for failing to give a resident Tylenol after a fall, as directed by her supervisor, causing undue pain to the resident. She refused to sign that warning. The claimant also received a written warning September 9, 2013, for failing to administer medications to a resident as ordered by the physician. She signed that warning.

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 section 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.

The employer terminated the claimant's employment after she was evaluated and found lacking in certain areas in August 2013, and then had additional performance and demeanor issues. The employer told the claimant it would reevaluate her two months after her August evaluation but due to the residents' complaints, the employer was forced to move that timetable up and make a decision about the claimant's employment September 17, 2013.

Several concerns about the claimant's performance and attitude were raised between September 10 and September 12, 2013. There were four resident complaints September 10, 2013, regarding the claimant's failure to give residents their medications and purposefully making one of them wait an extensive amount of time, which caused him to believe she was doing so intentionally to make him last in the night medication order. While those situations could have been misunderstandings or simple medication errors that happen to almost every nurse on occasion, the reports that the claimant was unkind to a resident who was sad and tearful and told another resident who asked for her eye drops to "forget it and go to bed," may be more concerning. Nurses are expected to be highly skilled health care workers but also caring and compassionate caregivers. The ability to comfort and soothe residents in nursing home facilities can be as important, if not more important on occasion, than the technical skills. Unlike a medication error, which the nurse does not realize she is making, issues involving simple kindness and compassion are choices made every day by individuals in the healthcare profession especially, as well as individuals in nearly every employment position, too.

The employer had talked to, and warned, the claimant about her behavior and demeanor with both residents and staff, as well as her work performance, but despite those conversations, warnings and evaluations, the claimant did not show sufficient or sustained improvement in those areas and continued to have problems and receive complaints as demonstrated by the issues raised September 10 and 12, 2013.

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 October 7, 2013, reference 01, decision is affirmed. 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/css