

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAVINA DAILEY
Claimant

APPEAL NO: 10A-UI-04628-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

BAXTER CARE LLC
Employer

OC: 02-21-10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 18, 2010, 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 May 8, 2010. The claimant participated in the hearing. Patrick Quigley, Administrator, participated in the hearing on behalf of the employer. Employer's Exhibits One through Five and Claimant's Exhibit One were 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 day charge nurse for Baxter Health Care Center from October 12, 2008 to February 25, 2010. On February 25, 2009, the claimant received a written warning after a resident's daughter called and said her father called her and complained he was having a hard time breathing and she called the claimant at 6:37 p.m. and was told she just saw him and he was fine, stating, "He is okay. We have it handled" (Employer's Exhibit One). She had not seen him recently and did not check on him. The resident was found at 7:20 p.m. unconscious and in respiratory failure (Employer's Exhibit One). On March 4, 2009, the claimant received a written warning and two-day suspension for failure to follow up on the prior nurse's concerns, documentation and assessment over a resident's rising temperature and respiratory concerns (Employer's Exhibit Two). The resident was later hospitalized with a 103 degree temperature without an assessment or intervention being done by the claimant (Employer's Exhibit Two). On February 8, 2010, the claimant received a written warning after a "resident was vomiting February 1, 2010, with no assessment or physician notification in the chart" and the claimant stopped medication, with no physician notification, for three days but only charted she did not give medications February 1, 2010 (Employer's Exhibit Three). The warning indicated when the state surveyors were at the facility January 8 to January 15, 2010, they also expressed concern about the claimant's assessment and documentation skills (Employer's Exhibit Three). The warning document further stated, "This is a firm final warning for employee to provide residents with status changes, timely assessment and intervention.

Employee must document her findings per professional standards of practice” (Employer’s Exhibit Three). The claimant was discharged February 25, 2010, for “failure to follow med pass protocol resulting in 3 residents not receiving a total of six meds” February 24, 2010; failure to follow narc count protocol and count narcs with oncoming nurse at shift change and sign out meds on February 17, 2010; and falsifying documentation by signing meds out when meds were not given February 24, 2010” (Employer’s Exhibits Four and Five). The claimant believes the failure to dispense medications February 24, 2010, was the result of someone trying to “set her up” and testified she thinks she pushed the medication out the back of the bubble medication cards but someone else put medication back in the bubble pack and taped over it so it would appear the medication was never given.

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.

During the last year of her employment the claimant received three written warnings, including a suspension, and a “firm, final warning” 17 days prior to her termination. While she believes she was “set up” there is no evidence to reach such a conclusion. The claimant failed to follow the narcotic count protocol by counting the narcotics with the oncoming nurse at shift change February 17, 2010, and failed to follow the medication pass protocol February 24, 2010, by

falsifying her documentation and signing the medications out when they were not dispensed. 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). Benefits are denied.

DECISION:

The March 18, 2010, 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