

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL GIBLER**  
Claimant

**APPEAL NO. 10A-UI-01540-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALEGENT HEALTH**  
Employer

**Original Claim: 12-27-09  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the January 21, 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 March 11, 2010. The claimant participated in the hearing. Andrea Bolte, Operations Director for Critical Care; Jennifer Smith, Human Resources Business Partner; Beth Flotte, Clinical Lead; and Lynn Corbeil, Employer Attorney, participated in the hearing on behalf of the employer. Employer's Exhibits One through Eight 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 registered nurse for Alegant Health from August 6, 2007 to September 25, 2009.

He received a written warning October 16, 2008, for failing to complete the admission criteria as he was trained to do (Employer's Exhibit Six and Six A). He did not complete the patient admission interview, any of the risk assessments, medication reconciliation, note the 10 pages of admission orders, do the MRSA face swab, or the patient education documentation (Employer's Exhibit Six A). Additionally, the patient had to wait two hours for the first physical assessment, which is required to be completed within 30 minutes of the patient's arrival (Employer's Exhibit Six A). The claimant told the nurse coming on duty he did not "do anything" and would complete the admission the following day because, "you have like 24 hours to do the admission," which was incorrect (Employer's Exhibit Six A).

On December 31, 2008, he received a final written warning for transferring a patient to the fourth floor with the orders noted but without entering the labs and x-rays December 17, 2008; for failing to give an incontinent patient in CCU a bath when she asked him to do so twice and then transferring the patient to PCCU without giving her a bath and not telling the PCCU nurse her situation, which the patient explained as the claimant not wanting to "clean her up" because he was "too busy" even though there was a CCU charge nurse available to help him if he so requested December 24, 2008; for failing to note six pages of admission orders, leaving an "extremely critical, unstable new

admission alone in the patient's room" while he sat at the nurse's station, and not documenting two critical labs despite the fact that educational reminders were given to him October 10, November 18, 27 and 28, 2008 (Employer's Exhibit Seven A). The claimant became very defensive when the employer issued the final written warning and said, "I've been shit on all day and why should this be any different" (Employer's Exhibit Seven A). The employer told him he was being "very inappropriate" and she did not "appreciate his language" (Employer's Exhibit Seven A). He asked what he needed to sign and then left the room, but the employer was concerned about him "caring for patients with his current attitude and manner" and told him he needed to leave for the day (Employer's Exhibit Seven A). He asked to speak to the employer again and apologized for his earlier behavior, but then proceeded to make excuses about the reasons he was receiving the final written warning (Employer's Exhibit Seven A).

On April 22, 2009, he received a documented verbal discussion regarding excessive overrides of patient IDs and medications, was educated on how to clear an IV pump and document it, and was educated on congestive heart failure (Employer's Exhibit Eight). On September 12, 2009, the claimant administered a dose of zosyn to a patient at 10:27 a.m. and another dose at 12:25 p.m. which resulted in double dosing the patient within a two-hour period when the order said every six hours. Zosyn is an antibiotic used to treat pneumonia and while the patient did not have any adverse reactions, it could have resulted in a very low white blood cell count, gastro-intestinal issues, or a severe allergic reaction among other things. The error was discovered on the next shift and an incident report was completed. Operations Director for Critical Care Andrea Bolte reviewed the claimant's charting, the physicians orders, and the medication administration record (MAR), and then met with the claimant to discuss what she found. After the investigation, it was determined the claimant should have checked the MAR, focused on what he was doing, and questioned why he would be giving the medication twice in a two-hour period when the order said every six hours. The claimant worked three days per week and was off September 15 – 18 and 21 – 24, 2009 as a result. The employer met with him September 25, 2009, and terminated his employment for failing to follow proper nursing procedures.

#### **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 claimant received a verbal warning, a written warning, a final written warning, and several verbal education sessions regarding his failure to follow proper nursing procedures. While the claimant blamed his errors on how busy his job was and told the employer it was too much to "expect nursing to check all their orders, call all critical labs, etc.," other employees in his position were able to do the job, follow proper procedure, and not make the number of errors he made. Critical care nursing requires extreme attention to detail and mistakes can be fatal. The employer gave the claimant several opportunities to improve his performance, part of which seems to have stemmed from his attitude of being put upon; but, despite those warnings, the claimant continued to make careless errors. Consequently, 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 January 21, 2010, 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.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw