

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

BRENDA F GRUNDMEIER
PO BOX 26
ARTHUR IA 51431

CARE INITIATIVES
c/o JOHNSON AND ASSOCIATES
PO BOX 6007
OMAHA NE 68106-0007

CARE INITIATIVES
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-01151-HT
OC: 01/04/04 R: 01
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, Care Initiatives, filed an appeal from a decision dated January 30, 2004, reference 01. The decision allowed benefits to the claimant, Brenda Grundmeier. After due notice was issued a hearing was held by telephone conference call on February 24, 2004. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Administrator John Schuttinga and Director of Nursing Elaine Neuman. Exhibit One was admitted into the record.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Brenda Grundmeier was employed by Care Initiatives from November 10 until December 31, 2003. She was a full-time licensed practical nurse.

On December 30, 2003, a resident fell out of lift and onto the floor. He was transferred to the hospital where he died the next day. Ms. Grundmeier was the charge nurse on duty at the time and she failed to note the incident in the nurses' notes, and failed to fill out the required Quality Tool #1 Form and the Nurses' Fall Investigation Form. All of these are required under the standards of care manual and the company policies.

Director of Nursing Elaine Neuman discovered this lack of documentation on December 31, 2003, and attempted to contact Ms. Grundmeier by phone but the number was disconnected. Ms. Neuman and Administrator John Schuttinga went to the claimant's home at 11:00 a.m. and asked her to fill out the necessary forms, but she refused to let them enter her home. Instead she returned to the facility where she filled out the forms. When asked why she did not perform this task the day before when the fall occurred, she stated she thought she had.

The claimant was discharged for failing to follow the required procedures in the performance of her job. Brenda Grundmeier has received unemployment benefits since filing a claim with an effective date of January 4, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant failed to perform an essential function of her job by documenting an incident with a resident who suffered a fall. Without proper documentation done in conjunction with the incident, the employer would not have a proper record of the resident's condition and any injuries in the event of an inquiry by any organization overseeing resident care. The claimant's failure could have resulted in negative consequences and is conduct not in the best interests of the employer. She is disqualified.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of January 30, 2004, reference 01, is reversed. Brenda Grundmeier is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible. She is overpaid in the amount of \$714.00.

bgh/kjf