

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

THERESA M KYAKULAGIRA
1407 – 7TH AVE
BELLE PLAINE IA 52208-1543

CARE INITIATIVES
C/O TALX – JOHNSON & ASSOC
PO BOX 6007
OMAHA NE 68106-6007

Appeal Number: 06A-UI-05537-DWT
OC: 04/23/06 R: 03
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Care Initiatives (employer) appealed a representative's May 22, 2006 decision (reference 01) that concluded Theresa M. Kyakulagira (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 14, 2006. The claimant participated in the hearing. Dawn Gibson, a representative with TALX, appeared on the employer's behalf with Dorie Brennecke, a registered nurse. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 28, 1983. The claimant worked as a full-time registered nurse. The director of nurses supervised the claimant.

On September 14, 2005, the employer gave the claimant her final written warning for failing to respond to a call for a nurse immediately. The claimant did not agree that she should have received a warning for this incident because she had just punched out. The claimant understood she could be discharged if the employer concluded she again failed to follow correct procedures.

On April 20, 2006, state surveyors were at the employer's facility reviewing the employer's procedures and the facility. Around 10:30 a.m., two state surveyors asked the claimant when she was going to give medicine to a resident who had a gastric tube. The claimant indicated she would do this between 11:00 a.m. and 1:00 p.m. The surveyors asked the claimant to give them a specific time because they wanted to observe this procedure and wanted to know if they should take an early or late lunch. The claimant told the surveyors she would give the medicine at noon.

The physician for this resident gave orders that the feeding pump should be turned off an hour before and an hour after the medicine had been administered. The feeding pump was turned off at 11:00 a.m. The claimant went to the resident's room at noon. When the surveyors were not present, the claimant looked for them and waited for the surveyors to return from lunch. When the surveyors had not returned by 12:10 p.m., the claimant gave the resident the medication because the feeding pump had already been off for more than an hour and the claimant did not know when the surveyors would return from lunch. After the claimant had given the medication through the gastric tube, the surveyors came to the resident's room to watch this procedure. The surveyors were upset because the claimant had not waited for them before she gave the resident the medication. The surveyors complained to the employer that the claimant had not cooperated with them and failed to follow their instructions – to wait until they were present before the claimant gave the resident the medication.

Although the claimant told the surveyors later she would do a mock demonstration of this procedure, they indicated this was not necessary. Even though the surveyors' coordinator contacted the employer the next to day to complain about the claimant's failure to cooperate with the surveyors, this incident was not cited in the surveyors' report.

The employer discharged the claimant on April 24, 2006. The employer discharged the claimant because the claimant violated the employer's policy again by failing to cooperate with state surveyors on April 20, 2006.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of

unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established compelling business reasons for discharging the claimant. The claimant's testimony as to what happened on April 20 and what the surveyors told her must be given more weight than the employer's reliance on hearsay information from people who did not testify at the hearing. While the claimant understood the surveyors wanted to observe medication being administered through a gastric tube, she did not understand she had to wait to do this until the surveyors were present. The facts indicate the surveyors were late returning from lunch. Since they knew the claimant was going to give the medication at noon, it is not known why they left late for lunch instead of going to lunch after the claimant gave the resident the medication. The claimant used poor judgment when she did not ask the director of nursing what she should do on April 20. The claimant had no way of knowing whether the surveyors would return to the facility by 12:11 p.m. or by 12:50 p.m. or later. On April 20, the claimant did not intentionally disregard the employer's interests by giving a resident medication when the surveyors were not present. The claimant did not commit work-connected misconduct. As of April 23, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's May 22, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of April 23, 2006, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kkf