

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DELOY RAINEY**

Claimant

**APPEAL NO: 11A-UI-10660-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**

Employer

**OC: 07-17-11**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the August 11, 2011, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 7, 2011. The claimant participated in the hearing with Attorney Don Gottschalk. Phyllis Hunt, Administrator; Tammy Bowser, DON; Latasha Porter, CNA; Sara Posekany, LPN; and David Williams, Employer Representative participated in the hearing on behalf of the employer.

**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 RN for Windsor Nursing & Rehab from June 7, 2011 to July 20, 2011. The claimant worked the 2:00 to 10:00 p.m. shift and covered one wing while the other second shift nurse covered the other wing. Shortly before 10:00 p.m. July 16, 2011, CNA Latasha Porter notified the claimant that a resident was very confused compared to when she was admitted earlier that evening. The claimant was giving her report to the third shift nurse, who covers both wings alone, but had not counted the narcotics with the third shift nurse or turned the key to the medication cart over to her yet. The third shift nurse also had not taken the other second shift nurse's report. Under the employer's policy the claimant is responsible for the residents on her wing until she gives the third shift nurse her report, counts the narcotics and gives her the medication cart keys, regardless of what time it is. The claimant should have assessed the resident but failed to do so. The third shift nurse believed the claimant took care of the assessment and did not do so herself until 12:20 a.m. The resident had to be taken to the hospital where she died later that morning. The employer investigated the incident and spoke to the second shift CNA who reported the situation, the second shift LPN and the third shift nurse. The employer called the claimant July 20, 2011, and asked her to come in to discuss the matter but the claimant refused. After several calls from the employer the claimant asked what the meeting was about and when the employer told her it would notify her when she came in to talk about it the claimant left a message stating she had hired an attorney. The employer called her

and put her on speakerphone and the claimant refused to discuss the situation and again said she hired an attorney. The employer told her that her employment was terminated and the claimant said that was fine because she hired an attorney.

### **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 § 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's insistence that the resident was no longer her responsibility does not comport with the employer's policy or general nursing practices and ethics. While she may have checked the resident at 9:30 p.m. the CNA told her the resident was confused, which was a significant change in her condition from the time she was admitted to the facility. As a nurse, the claimant knew that a resident's condition could deteriorate rapidly and her failure to assess the resident with a 'not my job' attitude violated the employer's policy as well as the responsibilities of a competent nurse. 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 must be denied.

**DECISION:**

The August 11, 2011, reference 02, 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.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs