

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICIA M CUNNINGHAM
Claimant

APPEAL NO. 09A-UI-03019-E2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CRYSTAL PROPERTIES INC
GENESIS SENIOR LIVING CENTER**
Employer

**OC: 02/01/09
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated February 20, 2009, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 20, 2009. Claimant participated personally. Employer participated by Robert Fisher, assistant administrator.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on January 26, 2009. Claimant was discharged on January 27, 2009 by employer because the employer believed the claimant had failed to document files properly and refused to go into the facility on her day off to discuss her documentation with the Director of Nursing. The claimant was hired as an RN and worked as a Charge Nurse on the 6 p.m. to 6 a.m. shift. The claimant had been warned twice about providing proper documentation in the records. She was warned on May 14, 2008 and January 19, 2009. The claimant was not working on January 26, 2009. She came to work to pick up her check. Mr Fisher saw her in the parking lot and told her to talk to Susie Davis, the Director of Nursing about documentation which may be needed in the files. The claimant called Ms. Davis from the parking lot and discussed the documentation and was not told by Ms. Davis she needed to come in to clarify the matter. Mr. Fisher learned the claimant did not go in the facility and discharged her for failing to go in personally and talk to Ms. Davis.

REASONING AND CONCLUSIONS OF LAW:

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 gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The employer did not provide evidence of improper documentation. Had it done so, given the prior warnings they may have shown misconduct. The employer did not prove that the claimant had failed to chart information. The employer discharged the claimant because she did not physically go in on her day off to talk to Ms. Davis about her documentation. The claimant credibly testified she spoke to the Director of Nursing and resolved the issue of documentation for that day.

The employer discharged the claimant for not going into the facility in person to talk to Ms. Davis. The claimant talked to Ms. Davis on her cell phone. She was not asked by Ms. Davis to come in the facility to correct any charting or paper work. The evidence is that the claimant reasonably understood she had complied with the direction of her employer. While her understanding may have been mistaken, her mistaken understanding does not rise to the level of misconduct.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct.

DECISION:

The decision of the representative dated February 20, 2009, reference 01, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

jfe/pjs