

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

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**CIARA C RHOADES**

Claimant

and

**CARE INITIATIVES**

Employer

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**HEARING NUMBER: 17BUI-00049**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION:** 96.5-2-A, 96.3-7

**DECISION**

**UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE**

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

The Claimant, Ciara Rhoades, worked for Care Initiatives from March 3, 2016 through December 6, 2016 as a part-time registered nurse. (11:35-11:59; 1:07:54-1:08:08) Part of the Claimant's nursing education involved a 'critical thinking' class which enables nurses to be prepared to make judgement calls in everyday situations that would arise in a health facility. (1:01:58-1:02:15)

Ms. Rhoades has mental health and anxiety issues, which sometimes affected her interactions at work, as she had mood swings. (1:09:50-1:10:13; 1:11:40-1:11:57) On October 20<sup>th</sup>, a resident requested to lie down, but the Claimant rudely told him he would have to wait. (15:36-15:39) She lost her composure on October 25<sup>th</sup>, threw up her hands and voiced negative comments about the employer and the job. (16:25; 1:45:19) On October 27<sup>th</sup>, the Employer issued a final warning and three-day suspension to the Claimant for these two incidents. (14:21-15:08) Ms. Rhoades

tried to obtain medication, but the medication she eventually received was not effective, which caused her to seek additional medical attention. (1:10:09-1:11:09)

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The Claimant experienced mental health issues on December 3<sup>rd</sup>, 2016. (44:55-45:00) At 2:50 p.m. that day, she called Ms. Knights (DON who was on call) regarding the Claimant's patient who had a discolored penis and low urinary output. (27:30-27:56) The Claimant was at a loss for what to do and requested guidance. (28:00-28:32) Ms. Knights asked her a series of preliminary questions for which Ms. Rhoades answered. (28:35-29:10) When the Employer asked if she flushed the catheter, the Claimant stated there was no order to do that. (29:14-29:43; 1:34:48) After being directed to look for an order in the patient's chart, the Claimant told Ms. Knights that she didn't know how to flush a catheter (30:03-22-30:25), which is a routine procedure. (30:45-30:49) Ms. Knights provided directions via telephone on how to proceed. (30:30-30:37) Another nurse assisted the Claimant in flushing the catheter. (31:00-31:06)

A little while later, the Claimant contacted Knights about another patient who had a seizure for which she didn't know what to do. (31:35-31:42) Knights, in turn, directed her to monitor the situation and notify the family. (32:00-32:12; 32:40-32:43) The Claimant called on Ms. Knights for further direction on another patient later that same evening. (32:54-33:36; 33:46-33:59) The final call came from a very upset Ms. Rhoades who tearfully told Knights that she expected to get fired (33:43-33:58) because after she had placed a CPM on a patient, the patient's daughter called the Claimant complaining that she didn't know what she was doing and should be fired. (34:23-35:32; 36:00-36:20; 1:29:20-1:30:10) The Claimant explained what the patient's orders were for the CPM and apologized for any misunderstanding. By the end of this day, Ms. Rhoades had also received 16 text messages from the Claimant who had also contacted Kim Brown, the nurse practitioner, eight times. (36:35-36:55; 1:21:15-1:21:24) The Employer seriously questioned her capabilities as a nurse to handle patients while alone in the building. (41:05-41:15; 41:21-41:33; 41:45-41:52; 42:15-42:17)

On December 4, 2016, Ashley Smith (Nurse Manager) came into the building and was immediately approached by the Claimant with questions, i.e., review her documentation from the day before. (47:20-47:32; 47:45-48:09) Ms. Rhoades later questioned Smith about a resident with a 102.2 degree fever who was confused and 'in an uproar' because he believed his roommate was trying to murder him. (49:05-49:58; 1:36:47) Smith directed the Claimant to remove the resident from his room and up to the dining room; give him Tylenol, a nebulizer treatment, and to monitor his condition. (51:15-51:30; 1:00:58-1:01:20) Ms. Rhoades should have known to do this procedure under this type of situation. (1:01:29) The resident complained of shortness of breath for which the Claimant sought additional direction for what is considered a routine medical situation. (50:55-51:42) The Claimant proceeded to check the resident's temperature at too frequent time intervals. When the resident's temperature did not come down, she panicked and questioned whether the resident should be sent to the hospital, which was not the appropriate protocol. (1:02:50) When she was told 'no', she asked if she was supposed to just let the resident die. (53:49)

Later, Smith noticed that the resident with the fever, who also had dementia, was in a confused state and asking off-the-wall questions to which the Claimant became frustrated and responded inappropriately. (56:25-56:35) The Claimant was focused and concerned about why the resident's fever was not coming down (57:15) because these same circumstances had happened before and the resident required hospitalization. (1:39:13-1:39:25; 1:39:55-1:40:12) When this

resident's family came to visit that evening, they pulled Smith aside to voice concerns about the resident and the Claimant's capabilities. (59:20-59:26)

The following Monday (December 5<sup>th</sup>), Ms. Brown verified the Claimant's eight calls and noted that only two were necessary. (37:10-37:24) As for the other six calls, the Claimant, as a registered nurse, should have known how to handle those situations. (38:03-38:07) This was not the first time Ms. Rhoades made so many calls requesting direction on how to handle a situation, many of which were within a registered nurse's realm of training and expertise. (38:34-38:52; 39:58-40:01) When the Employer reviewed the Claimant's nursing notes from the weekend, the notes were incomplete and vague. (1:04:54-1:04:56)

The Employer terminated Ms. Rhoades on December 6<sup>th</sup>, 2016 because the Employer believed the residents were not safe under her care. (13:24-13:28; 1:09:05-1:09:20)

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code Section 96.5(2)(a) (2013) provides:

*Discharge for Misconduct.* If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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 Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665, (Iowa 2000) (quoting *Reigelsberger v. Employment Appeal Board*, 500 N.W.2d 64, 66 (Iowa 1993)).

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 substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 NW2d 661 (Iowa 2000).

The record establishes that Ms. Rhoades was a short-term employee who suffered from mental health issues that she did not share with the Employer until after the October incidents and subsequent disciplinary actions. Although the Claimant provided testimony that she got her mood level contained for a short period, it is clear that she was easily flustered when dealing with stressful situations or uncooperative patients. As to the December 3<sup>rd</sup> incident, the Employer admitted the Claimant had done nothing 'wrong' per se. (32:25-32:32) However, the Claimant's lack of judgement as to how to handle the situation fell short of the Employer's expectations of her as a registered nurse. The Claimant's repeated calls and texts her superiors for direction on December 3<sup>rd</sup> for procedures that any registered nurse is trained to do demonstrated an inability to independently handle her professional responsibilities. She exhibited this same neediness the following day. Even the Employer surmised that the Claimant lacked confidence or knowledge as the reason why she constantly called for assistance. (40:24-40:35; 40:49-41:04)

Be that as it may, there is nothing in this record to support that the Claimant caused harm to the residents, or that she intentionally rendered less than standard treatment. At worst, she seemed almost paralyzed to perform unless she received additional instructive support from other staff. It is clear that the Claimant worked to the best of her abilities, but her best did not satisfy the Employer's expectations. The court in *Richers v. Iowa Department of Job Service*, 479 N.W.2d 308 (Iowa 1991) held that inability or incapacity to perform well is not volitional and thus, cannot be deemed misconduct. Based on this record, we conclude that the Employer failed to satisfy their burden of proof.

#### **DECISION:**

The administrative law judge's decision dated February 16, 2017 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for no disqualifying reason. Accordingly, she is allowed benefits provided she is otherwise eligible.

The Employment Appeal Board would also send this matter to the Iowa Workforce Development, Claims Bureau, for a determination of whether the Claimant is able and available for work in light of her medical condition.

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Kim D. Schmett

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Ashley R. Koopmans

