

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LUCINDA L LINEBAUGH
Claimant

APPEAL NO. 13A-UI-06462-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 05/05/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated May 20, 2013, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on July 9, 2013. Ms. Linebaugh participated. The employer participated by Caroline Semer, Hearing Representative and witness, Ms. Jaci Garden, Director of Nursing. Employer's Exhibits A and B were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Lucinda Linebaugh was employed by the captioned employer, doing business as Northern Mahaska Nursing and Rehabilitation, from May 30, 2008 until April 23, 2013 when she was discharged from employment. Ms. Linebaugh was employed as a full-time RN/Charge Nurse and was paid by the hour. Her immediate supervisor was the director of nursing, Ms. Garden.

Ms. Linebaugh was discharged on April 23, 2013 after she had failed to follow instructions and facility policy by obtaining proper documentation and doctor's orders for the reapplication of a narcotic patch on a patient. Ms. Linebaugh did not document the order or procedure in nursing notes as required after obtaining the voice order from the physician. Ms. Linebaugh was aware of the policy and the requirement. The claimant failed to do the required documentation as she was busy that day but intended to do it the following day. The employer considered the infraction to be serious because it may have resulted in miscommunication because there were no documented nursing notes and miscommunication may have jeopardized the patient.

The second reason for the claimant's discharge on April 23, 2013 was the claimant's failure to follow doctor's orders by changing a catheter in a female although written orders for the procedure had been completed. Ms. Linebaugh had "overlooked" the orders and did not implement them.

The employer utilizes a progressive discipline policy. Because Ms. Linebaugh had been warned in the past for failing to following procedures with respect to patient care, break times as well as medication errors and attendance, a decision was made to terminate Ms. Linebaugh from her employment.

It is the claimant's belief that recent absences for medical reasons had caused the employer to discharge the claimant so that a replacement with better attendance could be found.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In this matter the evidence in the record establishes that Ms. Linebaugh was discharged when she continued to violate company policies by failing to document or to provide care as directed by physicians. Ms. Linebaugh was aware of the requirements and the necessity that documentation be completed for the protection of patients. The employer considered the claimant's explanation that she had overlooked the duty or that she planned to do it the next day as an unacceptable excuse for failure to perform necessary duties. Because the claimant had received a number of previous warnings for policy violations a decision was made to terminate Ms. Linebaugh from her employment.

The administrative law judge concludes based upon the evidence in the record that the employer has sustained its burden of proof in establishing the claimant's discharge took place under disqualifying conditions. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated May 20, 2013, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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