

**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**

**SHEILA J GUITER
1309 M AVE W
OSKALOOSA IA 52577**

**HAWKEYE HEALTH SERVICES INC
PO BOX 41250
DES MOINES IA 50311**

**Appeal Number: 06A-UI-01551-H2T
OC: 02-06-06 R: 03
Claimant: Appellant (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/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 2, 2006, reference 06, decision that denied benefits. After due notice was issued, a hearing was held on February 27, 2006. The claimant did participate. The employer did participate through Peggy Rebarcak, Administrator.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a case manager/registered nurse full time beginning March 1, 2005 through January 6, 2006 when she was discharged.

The claimant was to visit a particular client once per month. In late December 2005 the employer discovered that the claimant had only visited the claimant every two months when the patient's wife called to inquire as to how often the visits were to occur. The claimant's own records indicate that she missed visits in September and November 2005. The claimant admits that the patient was to be visited once every month per the doctor's orders. Failure to visit the patient in a timely appropriate manner subjects the employer to fines from the State for being out of compliance with regulations. The claimant alleges that she made a visit on September 30, however there are no nursing notes or time sheet to support her allegation. It was the claimant's obligation to schedule her own patients and to insure that visits were conducted in a timely manner.

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 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

It was the claimant's obligation to insure that her patients were visited on an appropriate schedule to comply with both doctor's orders and state regulations. The claimant was to visit a particular patient once per month. The claimant failed to visit the patient in September and November despite her acknowledgment that she was required to visit on a monthly basis. The claimant alleges she did visit the patient in September, but no documentation that should exist had she made the visit exists. Had the claimant missed one visit, it could be looked upon as an oversight. However, the evidence does establish that the claimant missed two monthly visits with the same patient. It was her responsibility to schedule and keep the appointments. Her failure to do so subjects the employer to fines from the state authority. The claimant's actions constitute sufficient misconduct to disqualify her from receiving unemployment insurance benefits. Benefits are denied.

DECISION:

The February 2, 2006, reference 06, 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.

tkh/tjc