

**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**

**LAURA L KNOWLES
1453 BRECKINRIDGE CT
AMES IA 50010**

**NORTHCREST INC
1801 – 20TH ST
AMES IA 50010**

**Appeal Number: 04A-UI-07567-H2T
OC: 05-30-04 R: 02
Claimant: Appellant (2)**

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 June 18, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 4, 2004. The claimant did participate at the August 4, 2004 hearing. Additional hearing time was held on August 24, 2004. The claimant chose not to participate at the August 24, 2004 hearing. The employer did participate on both hearing dates through Linda Doyle, CEO/Administrator; and Teresa Kenton, Director of Business and Finance; Bonna Pinneke, Consultant; Deb Westerberg, R.N., and was represented by Terri Isacson, Attorney at Law. Employer's Exhibits One and Two were received into the record. Claimant's Exhibits A and B were received into the record.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as the Director of Clinical Services full time beginning February 14, 1999 through May 24, 2004 when she was discharged. The claimant was discharged for poor work performance, most specifically because she could not contain the labor costs and was consistently over budget. At the time of her discharge, the claimant was over \$19,000.00 over budget due to her poor control of labor costs. The claimant could not manage to control the overtime costs of employees despite continued and numerous counseling sessions with both Linda Doyle and Teresa Kenton. Ms. Doyle credibly testified that the claimant never met her expectations as to how she handled the budget regarding overtime and labor costs of employees. Throughout her employment, the claimant was not able to demonstrate that she could effectively and efficiently manage labor costs despite her repeated representations to both Ms. Doyle and Ms. Kenton that she would keep the budget in line. The claimant's documents clearly indicate that she was performing the job to the best of her ability. The claimant was able to perform some functions of her job to the employer's expectations. On May 13, 2004 a meeting was held between the claimant, Ms. Doyle and Ms. Kenton to again address the budget concerns, most particularly about the labor costs that seemed to be spiraling out of control. The claimant assured both Ms. Doyle and Ms. Kenton that she would be more careful in approving overtime and would get the labor costs under control. After that meeting, the claimant as Clinical Director still had the authority to approve overtime for employees. On May 14, 2004, an employee, Ann Johnson, had been removed from the work schedule by the scheduler to avoid paying her overtime. Ms. Johnson called the claimant and complained that she was not being allowed to work. The claimant allowed Ms. Johnson to work even though that meant Ms. Johnson would be paid overtime wages. The claimant was within her discretion in allowing Ms. Johnson to work overtime. When Ms. Doyle found out that the claimant had again approved overtime for an employee, notwithstanding their budget meeting only one day prior, the decision was made to discharge the claimant for poor work performance.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. Kelly v. IDJS, 386 N.W.2d 552 (Iowa App. 1986).

Nothing in the documents submitted by the employer or in the testimony submitted by the employer persuades the administrative law judge that the claimant was intentionally trying to mismanage the labor costs and the budget. In light of the fact that the claimant was never able to meet the employer's expectations with regard to the budget; it appears she was not capable of doing so. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Inasmuch as she did attempt to perform the job to the best of her ability but was unable to meet the employer's expectations, no intentional misconduct has been established, as is the

employer's burden of proof. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Accordingly, no disqualification, pursuant to Iowa Code Section 96.5-2-a, is imposed. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The June 18, 2004, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/tjc