

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTINA S TROTTER
Claimant

APPEAL NO. 09A-UI-15468-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NELSON MANOR INC
Employer

OC: 08/30/09
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Christina Trotter, filed an appeal from a decision dated October 6, 2009, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on November 16, 2009. The claimant participated on her own behalf and was represented by Iowa Legal Aid in the person of Katie Naset. The employer, Nelson Manor, participated by DON Dayle Tessner and Administrator Gena Franklin.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Christina Trotter was employed by Nelson Manor from August 19, 1994 until August 28, 2009 as a full-time dietary supervisor. In November 2008 the facility hired a new dietician who recommended a specific system of "diet cards" for all the residents. These would specify requirements or limitations on the diet of each resident. They were to be kept in the kitchen and be accessible to the cooks at all times. The claimant was responsible for making and maintaining the cards according to information received during weekly meetings where care plans were discussed or when she received notice from the nursing staff of any new doctors' orders. The dietary information is an issue of patient safety as the wrong diet could seriously impair a resident's health or medical treatment.

Ms. Trotter was written up and suspended on June 5, 2009, for failing to perform her job duties. The dietary cards had not yet been completed, the dietary aides were not trained properly, and when the employer requested the claimant to compile a list of duties for dietary aides she instead had another dietary aide do it for her. The claimant was advised her job was in jeopardy if the situation did not improve.

The week of August 24, 2009, several issues occurred. One cook could not find the dietary cards and they were eventually found in a cupboard under some other papers. Then the

evening meal was served at 5:30 p.m. instead of 6:00 p.m. State regulations require no more than 14 hours between the evening meal and breakfast, which, in this facility, was at 8:00 a.m. Administrator Gena Franklin observed the early meal time and questioned the claimant about it the next day. Ms. Trotter had changed the time because one of the dietary aides was only 14 years old and could not work past 7:00 p.m., and therefore was not able to get all her duties done before she left. Ms. Franklin told the claimant to change the meal time back to 6:00 p.m. to bring the facility back into compliance with the law.

On August 26, 2009, Ms. Franklin, DON Dayle Tessner and Dietician Andrea Maher, were reviewing the dietary cards. They found several on which important information was omitted or inaccurate. The Iowa Department of Inspections and Appeals had done a review of some of the residents' dietary cards on August 11, 2009, and those were in compliance, but not all the cards were reviewed by the government agency at that time. Not all of them were complete. Ms. Trotter seemed to feel putting down the residents' "likes and dislikes" was sufficient, but it was mandatory for the recommendations of the dietician to be added and this she did not do. There were other cards missing dietary orders from the residents' doctor.

The employer notified the claimant on August 28, 2009, she was discharged for failing to fulfill her required job duties.

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 claimant had been advised her job was in jeopardy as a result of her failure to perform her required job duties. The seriousness of the problem was reinforced with a suspension. In spite of the warning the claimant's performance did not improve to comply with the employer's requirements. From her testimony it is evident she tried to lay the blame off onto other members of her staff, which it was her requirement to train and supervise. It was her decision to serve the evening meal early, not to keep the dietary cards up to date and not to supervise the dietary staff for complete compliance with all state regulations and employer policies.

This was not a single, isolated incident of poor judgment or poor performance. The problem with the dietary cards extended back to November 2008 and continued past the June 2009 warning and suspension. Her failure to comply with required meal times, maintain proper documentation of resident diets and general lack of attention to her job duties is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of October 6, 2009, reference 01, is affirmed. Christina Trotter is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs