

**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**

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**Appeal Number: 04A-UI-00677-ET
OC: 12-14-03 R: 03
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 January 7, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 10, 2004. The claimant participated in the hearing. The claimant participated in the hearing with Attorney Mark Thomas. Julia Holdridge, Director of Human Resources, and Sue McDaniel, Director of Nursing/Assistant Administrator, participated in the hearing on behalf of the employer with Attorney Stephen Scott.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time registered nurse for Hillcrest Family Services from August 7, 2001 to December 12, 2003. On December 7, 2003, first shift nurse, Lise McTaggar, informed the claimant that she needed to give a resident his injection of Haldol because Ms. McTaggar had not had time to do so. On December 11, 2003, Director of Nursing Sue McDaniel reviewed the medication administration record (MAR) and noticed that the claimant indicated she gave the resident the injection December 16, 2003, the date of his next scheduled Haldol injection. Ms. McDaniel questioned the claimant about the situation December 12, 2003, and the claimant admitted administering the shot December 7, 2003. Ms. McDaniel asked why the MAR stated she gave the medication December 16, 2003, and the claimant said she did not know. The claimant told Ms. McDaniel that Ms. McTaggar asked her to give the injection and she thought the resident was due for his Haldol but agreed she should have checked the MAR for the due date. When a medication error is made, the employee is expected to contact the physician on call, document any subsequent orders and complete a medication error report. The claimant was not aware she made an error until her conversation with Ms. McDaniel. She asked if she could do an error report and Ms. McDaniel said no. Ms. McDaniel discussed the situation with the home office and the employer terminated the claimant's employment December 12, 2003. The claimant filed a grievance with the employer October 17, 2003, regarding Ms. McDaniel and had a personal conflict with a doctor at the facility regarding his treatment of her daughter at another facility. The claimant was placed on a 90-day probation for substandard performance October 30, 2003.

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.

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).

The employer has the burden of proving disqualifying job misconduct. 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 willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer testified the claimant was discharged for substandard performance and willfully falsifying a resident's MAR December 7, 2003. The claimant admitted that she gave the resident an injection of Haldol December 7, 2003, which was nine days early, but stated she relied on the written and verbal instructions of Ms. McTaggar in doing so, and the employer confirmed that information with Ms. McTaggar. She further testified that she documented her actions in the wrong date box on the MAR but was not aware of her error until Ms. McDaniel asked her about the situation December 12, 2003, and the employer would not allow her to complete a medication error report. While the claimant should have checked the previous MAR to insure she was providing the medication on the correct date, the administrative law judge found the claimant's testimony about the incident credible and cannot conclude that the claimant's actions constitute intentional misconduct. Consequently, benefits are allowed.

DECISION:

The January 7, 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.

je/b