

**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: 05A-UI-01066-SWT  
OC: 01/02/05 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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated January 21, 2005, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on February 15, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Roger Holderman participated in the hearing on behalf of the employer with witnesses, Ingrid Weber and Lynne Holderman.

FINDINGS OF FACT:

The claimant worked for the employer as a certified nursing assistant from November 6, 2003 to January 1, 2005. The claimant was informed and understood that under the employer's work rules, certified nursing assistants were not authorized to sign off as a witness on a wasted drug form, which is a form that is used to document surplus or outdated drugs that are being disposed of.

In early December 2004, the employer discovered that a nurse was stealing addictive prescription drugs. The offense was reported to the Department of Inspections and Appeals who conducted an investigation starting around December 20, 2004. During the course of the investigation, the employer discovered that the claimant had improperly signed a wasted drug form for the nurse who had been stealing drugs. There were also times in December when the claimant was sleeping during his work shift and reporting to work with the odor of alcohol on his breath. As a result of these offenses, the employer discharged the claimant on January 1, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

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 claimant's violation of a known work rule prohibiting certified nursing assistants from signing wasted drug forms was a willful and material breach of the duties and obligations to the

employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. In addition, the claimant violated the standards of behavior the employer had the right to expect by sleeping during his work shift and reporting to work smelling of alcohol. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated January 21, 2005, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

saw/tjc