

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANN D HEYSINGER
Claimant

APPEAL NO. 12A-UI-09296-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**RIDGECREST VILLAGE
CHRISTIAN RETIREMENT HOMES INC**
Employer

**OC: 07/08/12
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Ridgecrest Village filed a timely appeal from a representative's decision dated July 31, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on August 27, 2012. Claimant participated. Participating on behalf of the claimant was Mr. Richard Farwell, Attorney at Law. The employer participated by Ms. Gina Houzenga, Human Resource Manager, and Ms. Karen Blair, Assistant Director of Nursing.

ISSUE:

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

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Diann Heysinger was employed by Ridgecrest Village Christian Retirement Homes, Inc. from November 30, 2011 until July 2, 2012 when she was discharged from employment. Ms. Heysinger was employed as a full-time registered nurse and was paid by the hour.

Ms. Heysinger was discharged from her employment based upon her inability to function at the level of competency expected by the employer. During the course of her employment with Ridgecrest Village, Ms. Heysinger had made a number of medication errors or omissions and had been warned both verbally and in writing.

The final incident that caused the claimant's discharge took place when Ms. Heysinger failed to dispense a medication to a resident prior to leaving her work shift on July 2, 2012. Ms. Heysinger was unaware that the particular resident was to receive the medication as the medication had not been highlighted to bring to the attention of the nursing staff the need for the medication to be dispensed.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes willful misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). In order to be disqualifying in nature the misconduct must be "substantial." When based upon carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa 1988).

In this matter it was the employer's belief that Ms. Heysinger had the ability to perform the duties of her job at the time of hire, however, based upon a number of medication errors the employer concluded that the claimant was unable to function at the level of competency expected by the employer and made a management decision to terminate Ms. Heysinger from her employment with the organization.

The evidence in the record does not establish intentional or willful misconduct on the part of the claimant during the final incident. The claimant was not alerted to the necessity of providing medication to a resident before the shift ended as the resident's name and medication had not been "highlighted" and, therefore, the claimant was unaware that the medication needed to be issued before she left for the day.

While the decision to terminate Ms. Heysinger may have been a sound decision from a management viewpoint, for the above-stated reasons, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing intentional, willful misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated July 31, 2012, reference 01, is affirmed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs