

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

SHARON K PRATT  
#2 301 E LOCUST  
BLOOMFIELD IA 52537

GOOD SAMARITAN SOCIETY  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-11375-AT  
OC: 10-09-05 R: 03  
Claimant: Respondent (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 for Misconduct

STATEMENT OF THE CASE:

Good Samaritan Society, Inc. filed a timely appeal from an unemployment insurance decision dated October 27, 2005, reference 01, which allowed benefits to Sharon K. Pratt. After due notice was issued, a telephone hearing was held November 21, 2005 with Ms. Pratt participating. Human Resources Associate Fred Metcalf and Assistant Director of Nursing Angela Prevo participated for the employer. Exhibit One was admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Sharon K. Pratt was employed by Good Samaritan

Society, Inc. from March 23, 2004 until she was discharged on or about October 3, 2005. On October 2, 2005, Ms. Pratt gave an anti-anxiety medication known as Ativan to a resident. A CNA misunderstood a comment from Ms. Pratt and believed that Ms. Pratt had given the resident her personal medication. The medication belonged to the resident, and Ms. Pratt had a doctor's order allowing the use of the medication.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for misconduct in connection with her employment. 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.

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 to prove. See Iowa Code section 96.6-2. Among the elements it must prove is that the final incident leading directly to the decision to discharge was a current act of misconduct. See 871 IAC 24.32 (8).

The employer did not call the CNA who had reported the incident. Although Ms. Prevo had spoken to Ms. Pratt about the incident, she had not identified it as an investigation. Ms. Pratt denied during the investigation that she had used her own medication, and she repeated that statement under oath in the hearing. The employer's evidence is not sufficient to offset the claimant's sworn, plausible denial. Benefits are allowed.

DECISION:

The unemployment insurance dated October 27, 2005, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

kkf/kjw