

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**TINA C. COMEGYS**  
Claimant

**GRAPETREE MEDICAL STAFFING INC.**  
Employer

**Case No. 21IWDUI2045**

**APPEAL 21A-UI-05433**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/20/20**  
**Claimant: Appellant (2)**

---

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the February 9, 2021 (reference 04) unemployment insurance decision denying benefits. The stated basis for the denial was that the claimant was discharged from work on September 30, 2020 for failure to follow instructions. The parties were properly notified of the hearing. A telephone hearing was held on April 16, 2021. The claimant, Tina Comegys, participated personally. The employer, Grapetree Medical Staffing Inc. (Grapetree) did not participate in the hearing. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records including the fact-finding documents.

**ISSUES:**

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Grapetree is a medical staffing agency based in Milford, Iowa. Comegys, a registered nurse (RN), began working for Grapetree in February or March 2020. She completed five or six temporary placements with different medical facilities without incident before being placed with Story County Senior Center in September 2020. Story County Senior Center is a medical facility providing both rehabilitative services and long-term nursing care.

On September 22, 2020, Comegys reported to Story County Senior Center to work a 6:00 a.m. to 6:00 p.m. shift. One of the nurses on duty informed Comegys she would be assigned to the second floor to provide care to residents in the long-term care wing of the facility. The unidentified nurse was preparing to leave the facility, and did not provide detailed instructions.

Comegys went upstairs as directed, and reviewed the medication administration records (MAR). Dispensing medication is a primary duty of RNs, as nursing assistants are prohibited from doing so by their licensure status.

Comegys determined the unit was otherwise quiet, so decided to start dispensing each resident's daily medication into small plastic cups. A nursing assistant soon approached and asked if Comegys needed help. Comegys instead asked her to take the resident's blood sugars. Meanwhile, another RN came upstairs and became upset Comegys had decided to pre-fill the residents' medication orders. This nurse then began delivering medication to residents.

At some point, one resident noticed that the medication provided to her was not correct. It was then discovered that the medication prescribed to two different residents had been dispensed into one medication cup. The mistake was corrected, and all residents ended up with the appropriate medication in the prescribed dosages.

The facility nevertheless categorized the incident as a "medication error," and informed Comegys that she no longer would be needed for the day. The Director of Nursing subsequently escorted Comegys from the facility.

Comegys contacted Grapetree that day to report the incident. Grapetree cancelled all of Comegys' upcoming, scheduled shifts as of September 30, 2020.

Comegys does not believe she was the one who made the mistake, and attributes the incident to the fact three people had become involved in the dispensing process. She also noted that because no one in fact ingested improper medication, the incident is appropriately classified as a "near miss," as opposed to a "medication error."

On October 2, 2020, Comegys started working for Glen Oaks Alzheimers Specialty Care Center (Glen Oaks) in Urbandale, Iowa. She notified Glen Oaks on or about December 18, 2020 that she had been exposed to COVID-19 and needed to quarantine. She subsequently tested positive, and therefore, was off work due to the virus until January 10, 2021. Comegys seeks a closed period of unemployment compensation during the time period she was off work due to her COVID quarantine and recovery.

#### **REASONING AND CONCLUSIONS OF LAW:**

There is no dispute either that Story County Senior Center terminated the contract for Comegys' services, or that Grapetree subsequently terminated her upcoming shifts following the incident. This case therefore will be evaluated pursuant to Iowa Code § 96.5(2)a rather than § 96.5(1). For the reasons that follow, the administrative law judge concludes Comegys was discharged from employment for no disqualifying reason. Benefits are allowed.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(1)a defines "misconduct" in this context as:

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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

As recently clarified by the Iowa Supreme Court: "The standard an employer must meet to sustain disqualification for unemployment benefits is more demanding than the standard ordinarily required to support a termination of employment for just cause." *Irving v. Employment Appeal Bd.*, 883 N.W.2d 179, 195-96 (2016); see also *Gaborit v. Employment Appeal Bd.*, 743 N.W.2d 554, 558 (Iowa Ct. App. 2007) (violation of known work rule does not establish *per se* disqualification from receiving unemployment compensation). "Unemployment statutes should be interpreted liberally to achieve the legislative goal of minimizing the burden of involuntary unemployment." *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6, 10 (Iowa 1982). The employer has the burden of proof in establishing disqualifying job misconduct. *Id.* at 11.

Here, it appears Comegys was fired for a medication error. Comegys disputes that she in fact made an error, and claims that in any event the incident should have been classified as a "near miss." Regardless, the fact both Story County Senior Center and Grapetree considered Comegys' job performance to be unsatisfactory does not establish that she acted with "willful or wanton disregard" of either company's interests--creating a "material breach" of her employment duties. Nor has Grapetree proved she acted with wrongful intent or evil design. See, e.g., *Billingsley v. Iowa Dep't of Job Servs.*, 338 N.W.2d 538, 540 (Iowa Ct. App. 1983) (distinguishing between standard for discharging an employee for known violation of work rules and standard to establishing misconduct sufficient to deny unemployment compensation). Rather, Comegys testified credibly that she is very careful each time she dispenses medication to make sure all patients/residents are given the appropriate medications in the correct dosages.

The terms of Comegys' employment contract with Grapetree are not of record. Nevertheless, to disqualify Comegys from receiving unemployment benefits, it was Grapetree's burden to prove Comegys acted with willful or wanton disregard of the employers' interest, or exhibited recklessness or carelessness of such a degree as to suggest wrongful intent or evil design. No such evidence exists in the present case. Accordingly, the representative's decision must be reversed.

**DECISION:**

The February 9, 2021 (reference 04) unemployment insurance decision is **REVERSED**. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Carla J. Hamborg  
Administrative Law Judge

April 19, 2021  
Decision Dated and Mailed

CJH/aa

cc: Tina C. Comegys, Claimant (by first class mail)  
Grapetree Medical Staffing, Inc., Employer (by first class mail)  
Nicole Merrill, IWD (by email)  
Joni Benson, IWD (by email)