IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

SUSAN K SANTEE Claimant **CARROLL CO COUNCIL FOR THE PREVEN** Employer	**APPEAL 22A-UI-00085-CS-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 10/17/21** **Claimant: Appellant (2)**

Iowa Code §96.5(2)a-Discharge/Misconduct
Iowa Code §96.5(1)- Voluntary Quit

STATEMENT OF THE CASE:

On November 23, 2021, the claimant/appellant filed an appeal from the November 16, 2021, (reference 01) unemployment insurance decision that denied benefits based on claimant being discharged on October 19, 2021, for violation of a known company rule. The parties were properly notified about the hearing. A telephone hearing was held on January 20, 2022. Claimant participated at the hearing. Employer participated through Waiver Home Coordinator, Samantha Schultz. Jennifer Deist and Stacey Peter were present as witnesses on behalf of the employer. Administrative notice was taken of claimant's unemployment insurance benefits records.

ISSUE:

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: Claimant began working for employer on June 13, 2019. Claimant last worked as a full-time waiver home employee.

Claimant provided care for a nonverbal client that had a history of biting, hitting, grabbing glasses, pulling hair, and harming other staff and clients. The client has a medication (Alprazolam) that the staff can give to client on an as needed basis to help calm and alleviate client's anxiety. The prescription allows for the client to receive two tablets (.5 mg each tablet) of Alprazolam a day. The prescription does not specify if those tablets can be taken at the same time or if they need to be given at separate times and the appropriate amount of time between each tablet. The client's medical records show a history of only giving one tablet at a time. The claimant did not exceed the recommended dosage for the client.

On October 12, 2021, the client was having behavioral issues where she was assaulting staff and clients. The client was grabbing glasses of peoples' faces and hitting. Claimant made the decision to give client two tablets of the medication at the same time to calm the client. Claimant gave the medication because she was tired of being attacked by the member. In claimant's

previous experience, giving client one tablet would not calm client so she would stop assaulting the staff and clients. Claimant drafted an incident report informing the employer of her administering the medication to the client due to client's harmful behavior.

Jennifer Deist is the employer's nurse. Ms. Deist reviewed claimant's incident report and determined claimant had committed a medication policy violation when claimant administered two tablets of the medication at the same time. The employer's medication policy in relevant part states:

> "The service provider will read the prescription on the medication container or 'authorization to supervise the consumption of medication attachment' to verify correct medication consumption. The service provider should know the reason each member takes the medication and where to find possible side effects….If there is a medication error the service provider will complete an incident report, will document the medication name, date, time, dosage and route… All FRT staff will follow the six rights when giving/administering all medication….staff will give the right dose at the right time."

Claimant was aware of the policy through her orientation and through a training that she completed on March 5, 2021.

Staff members are trained that if they have questions about administering the medication then they need to contact herself or another nurse before they administer it to the client. If a nurse is not available then the staff should contact Waiver Home Coordinator, Samantha Schultz, with their questions. Claimant knew Ms. Deist was absent and was not available to answer questions. Claimant did not know what on-call nurse was on duty to call to ask questions about the medication. Claimant did not call anyone prior to her administering the medication. Claimant observed the client hurting others and needed the behavior to stop so she made the decision to give both tablets at once.

Ms. Deist notified Ms. Schultz of the incident. Ms. Schultz notified Stacy Peter of the incident. Stacy Peter is the Human Resources Director. Ms. Schultz and Ms. Peter made the decision to terminate claimant for insubordination due to making medication errors and for client safety. Claimant was also terminated for demonstrating a disregard for the safety of a member. Claimant was separated from employment on October 21, 2021, when she was discharged.

Claimant did not have any prior written or verbal warnings about violating the employer's medication policy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes 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.
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> 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 proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). "Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy. However, if employer fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it

incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

In this case it is undisputed that claimant administered two tablets of client's medication to client at the same time. The issue is whether this is job-related misconduct that would disqualify claimant from receiving unemployment benefits. The prescription states that client can receive two tablets of the medication daily. The issue with the prescription is that it does not prohibit claimant from administer the medication at the same time. It is common knowledge and practice for a mediation to specify the maximum amount of medication allowed per day and the time period in which a patient can receive each dose of medication. It is reasonable for claimant to conclude the tablets can be administered at the same time because the prescription would have specified the time the tablets can be taken if they needed to be separately. Furthermore, claimant did not exceed the maximum dosage when she gave it to client.

The administrative law judge finds the conduct for which claimant was discharged was at most an isolated incident of poor judgment. A claimant will not be disqualified if the employer shows only "inadvertencies or ordinary negligence in isolated instances." 871 IAC 24.32(1)(a). Claimant was careless, but the carelessness does not indicate "such degree of recurrence as to manifest equal culpability, wrongful intent or evil design" such that it could accurately be called misconduct. Iowa Admin. Code r. 871-24.32(1)(a); *Greenwell v. Emp't Appeal Bd.*, No. 15-0154 (Iowa Ct. App. Mar. 23, 2016). Claimant was witnessing and experiencing assaultive behavior by the client. To protect herself, other staff, and other clients, claimant administered the medication within the allotted dosage to make client less anxious so she would stop harming people. At best ordinary negligence is all that is proven here.

Additionally, claimant did not receive a prior verbal or written warning regarding violating the medication policy. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Because the employer has failed to establish disqualifying misconduct, benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The November 16, 2021, (reference 01) unemployment insurance decision is REVERSED. 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.

Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

February 9, 2022
Decision Dated and Mailed

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