BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

PATRICIA A BRITT Claimant, and THE UNIVERSITY OF IOWA Employer.	:	HEARING NUMBER: 09B-UI-10575 EMPLOYMENT APPEAL BOARD DECISION

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-a

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The claimant appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The claimant, Patricia A. Britt, was employed by The University of Iowa from August 22, 1988 until June 18, 2009 as a full-time medical technician. (Tr. 5, 8, 13) On May 1, 2009 (Tr. 12, 15), the employer installed a new computer system to which many employees had difficulty adjusting in spite of the numerous training sessions offered. (Tr. 9) A local newspaper featured an editorial "… entitled Data System Not Perfect." (Tr. 9) The claimant was entering a patient's medical history into the system on June 10th, 2009 when she mistakenly entered a dosage of 400 milligrams instead of 40 milligram of Lasix. (Tr. 6, 10, 15, 18) The incorrect dosage would have been fatal had the error not been discovered by another practitioner who relayed the error to Jane Hummer, the claimant's immediate supervisor. (Tr. 6, 8, 14) Unbeknownst to Ms. Britt, an investigation ensued. (Tr.6)

The claimant had a few other infractions, the first of which occurred over a year and half ago on January 30, 2008 when she received a counseling for administering the wrong vaccine that she corrected immediately. (Tr. 7) The second incident occurred April 7, 2008 when the employer verbally reprimanded her for "documenting a vaccine that she did not administer…" (Tr. 7) Nearly a year later (May 29, 2009), Ms. Britt was suspended for three days for giving a patient a tetanus/diphtheria shot instead of a tetanus/pertussis/diphtheria vaccine. (Tr. 7, 16, 19) When she tried to enter it into the new system, the system rejected it. (Tr. 16) She realized her error and immediately reported it to the doctor instead of the charge nurse. (Tr. 7, 14, 16-17, 19) The doctor assured her that is wasn't a problem, as she could administer the other vaccine at another time. (Tr. 17, 20)

At the conclusion of the investigation, Ms. Hummer called Ms. Britt into her office on June 18th and terminated her for making medication errors. (Tr. 5-6, 14) This was the first time the claimant learned of her mistake. (Tr. 15)

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2009) provides:

> *Discharge for Misconduct*. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:
>
> The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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 Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665, (Iowa 2000) (quoting Reigelsberger v. Employment Appeal Board, 500 N.W.2d 64, 66 (Iowa 1993).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 NW2d 661 (Iowa 2000).

The claimant was a long-term employee having worked for approximately 21 years with a relatively blemish-free employment history (save two verbal warnings in first quarter of 2008 that she didn't remember) (Tr. 7, 18) until the new computer system was installed in early May of 2009. (Tr. 8-9, 12) The problems with this new system were so vast that it caught the eye of the local media. (Tr. 9) Although the May 29th error was probably not attributable to problems with the new computer system, it is plausible that the June 10th error was.

These two infractions that occurred during her last year of employment do not constitute "… carelessness or negligence of such degree of recurrence as to manifest equal culpability…" As for the May 29th incident, the claimant substantially complied with protocol by alerting the doctor of her error. Her mistake in this instance caused no harm, and was easily rectified by giving the missing vaccine at another time. As for the final incident, Ms. Britt did not remember entering an extra zero and provided credible testimony that if she had seen it, she would have corrected it. (Tr. 15) Even the employer agreed that it was possible for Ms. Britt to accidentally enter an extra '0' and not know it. (Tr. 10) The employer also admitted that he believed her mistakes were *not* intentional (Tr. 11, 12), which the claimant corroborated. (Tr. 19, 20) While the employer may have compelling business reasons to terminate the claimant, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). The employer has failed to satisfy their burden of proof. Based on this record, we conclude that the claimant's final act did not rise to the legal definition of misconduct such that she would be denied benefits.

DECISION:

The administrative law judge's decision dated August 19, 2009 is **REVERSED**. The claimant was discharged for no disqualifying reason. Accordingly, she is allowed benefits provided she is otherwise eligible.

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John A. Peno

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Elizabeth L. Seiser

AMG/ss