

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PERLA GARDNER**  
Claimant

**APPEAL NO. 14A-UI-04125-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE UNIVERSITY OF IOWA**  
Employer

**OC: 03/30/14  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated April 18, 2014, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on May 8, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Mary Eggenburg participated in the hearing on behalf of the employer with a witness, Kelly Petrulevich.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a staff nurse from June 1, 2006, to March 30, 2014. She received two warnings on March 17, 2014. The first was because a charge nurse alleged the claimant had failed to bring her Ativan for a patient who was having a seizure and asserted she was too busy. In fact, the charge nurse had asked the claimant for Ativan but then agreed to wait to assess the seizure according to hospital protocol for a first seizure. After the doctor was called and the patient was stabilized, the claimant went out to check for call lights from other patients. She met the doctor as she was going down the hall and explained about the patient who had the seizure and believed the doctor and the charge nurse had things covered. The claimant then responded to some call lights. Afterward, when the claimant returned to the room, the charge nurse asked where the Ativan was. The claimant was unaware that the charge nurse still wanted her to get the Ativan and she explained to the nurse what she was doing. The second warning was after the claimant had called a float nurse during off hours to question her about the transfer of a critically ill patient that had happened three days earlier. The float nurse was uncomfortable about the questions because she did not understand what the claimant's purpose was in questioning her.

In early March 2014, a patient submitted a comment card complaining about the claimant's treatment of her on January 19, 2014. The physician's order was one to two tablets of pain medication every four hours as needed. The patient alleged the claimant had given her one tablet even though she had complained of pain. In fact, the claimant had given the patient one

tablet at about 11 a.m. Afterward, she had monitored the patient's pain level and had asked her periodically during the next four hours whether she wanted another pain pill. Before 2 p.m., the patient had declined another pain pill when the claimant asked her. At about 2 p.m., the patient requested a pain pill and was given a pain pill. Although another nurse physically gave the patient the pill, the claimant recorded that she had administered it. She did not think there was an issue with this because she had handed the pill to the nurse and witnessed the nurse give the patient the pill and the patient taking the pill.

The patient also commented that the claimant hand-washing when she entered and left the room made the patient feel unclean and that the claimant had yelled at her and made her cry. In fact, the claimant was following hospital sanitation procedures, and never yelled at or acted rude toward the patient.

The claimant was off work on vacation for two weeks in March 2014. After she returned to work, an investigation was conducted regarding the patient comment card. On March 30, 2014, the employer discharged her for allowing the nurse to give the patient the pain pill that she signed off as administering and based on the allegations from the patient about the claimant withholding pain medication and harsh treatment of her.

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

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Iowa Code § 96.6-2; Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (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 N.W.2d 661, 665 (Iowa 2000).

The unemployment insurance rules provide: "While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act." 871 IAC 24.32(8).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant's testimony was extremely credible about her interaction with the patient who complained in the comment card about her. Based on the

preponderance of the credible evidence, the claimant did not withhold pain medication from the patient or treat her harshly. No willful and substantial misconduct has been proven in this case.

**DECISION:**

The unemployment insurance decision dated April 18, 2014, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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