

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA M ARTER
Claimant

APPEAL NO. 08A-UI-04157-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

**OC: 04/06/08 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated April 24, 2008, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 13, 2008. Claimant participated personally. Employer participated by Jacalyn Gacke, Administrator; Lori Pearson, Director of Nursing represented by Talx Attorney Josh Burrows. Exhibits One through Fourteen were admitted into evidence.

ISSUE:

The issues in this matter are whether claimant was discharged for misconduct and is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for the employer March 24, 2008.

Employer discharged claimant on March 28, 2008 because claimant sent 11 hydrocodone pills home with a discharged resident of the nursing home. Up to 11 pills could be used during a 24-hour period. The drugs were not sent according to policy. Claimant failed to obtain a doctor's order before sending the medication home. Claimant did not complete discharge instructions on the medication as another nurse was working on that at the time claimant sent the pills out. Claimant documented the use of the pills on a log for controlled substances. Claimant had sent pills home with residents on other occasions using the same inappropriate procedure.

Employer indicated a four step procedure was necessary for sending home medication. Later in the testimony employer indicated that this particular medication should never be sent home with a resident in any circumstance.

Claimant had no final warning on her record. Claimant was informed of the policy that she could be discharged for medication errors.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. 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.

The administrative law judge holds that the evidence has failed to establish that claimant was discharged for an act of misconduct when claimant violated the employer's policy concerning medication errors. Claimant was warned concerning this policy.

The last incident, which brought about the discharge fails to constitute misconduct because this is an isolated instance of poor judgment. Claimant had a clean record of employment. The lack of a prior warning detracts from a finding of intentional conduct. While claimant may have been in violation of policy she clearly did not understand such. Claimant had been sending medication home with residents in the same manner for some time. This is an isolated instance of poor judgment or unintentional policy violation. Employer's contradictory testimony also detracts from a finding of an intentional policy violation. Employer has failed to meet its burden.

Therefore, claimant was not discharged for an act of misconduct and as such, is not disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated April 24, 2008, reference 01, is affirmed. Unemployment insurance benefits shall be allowed, provided claimant is otherwise eligible.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs