

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SUSAN M LUCIER**

Claimant

**APPEAL NO. 10A-UI-10994-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CEDAR VALLEY HOSPICE INC**

Employer

**OC: 07/11/10**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Cedar Valley Hospice (employer) appealed a representative's August 6, 2010 decision (reference 01) that concluded Susan Lucier (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 21, 2010. The claimant participated personally. The employer was represented by Beth Hanson, Attorney at Law, and participated by Katie Unland, Human Resources Director; Stacy Weinke, Director of Clinical Services; and John Fox, Clinical Service Manager. The employer offered and Exhibit One was received into evidence. The claimant offered and Exhibit A was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 17, 2006, as a full-time registered nurse. The claimant suffers from post traumatic stress syndrome. She is under a doctor's care and takes medication for the affliction. The claimant signed for receipt of the employer's handbook in 2006 but did not receive the updated handbooks that were later issued. The employer issued the claimant a written warning on July 17, 2009, for inappropriate conduct. Some of the items in the warning the claimant did not do. The employer notified the claimant that further infractions could result in suspension from employment.

On July 12, 2010, the claimant was in a meeting with Mr. Fox and five other co-workers. During the meeting the claimant had a reaction to the recent change in her medication. She developed a pounding headache and asked Mr. Fox repeatedly to clarify what he was saying. Eventually she had to leave the room due a panic attack. The employer terminated the claimant on July 15, 2010.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct connotes volition. A failure in job performance which results from inability or incapacity is not volitional and therefore not misconduct. Huntoon v. Iowa Department of Job Services, 275 N.W.2d 445 (Iowa 1979). The employer discharged the claimant has the burden of proof to show evidence of intent. The employer did not provide any evidence of intent at the hearing. The claimant's behavior was due to a medical condition. Consequently the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's August 6, 2010 decision (reference 01) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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