

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

CAROL M HULST

Claimant

and

GOOD SAMARITAN SOCIETY INC

Employer

HEARING NUMBER: 18BUI-05068

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 DENIED

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. With the following modification, the administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED** with the following **MODIFICATION**:

We emphasize that the legal standard for misconduct is not changed by the fact that the Claimant works in health care and was performing very important duties when she was negligent. The facts that the work done by persons working the Claimant's job for this Employer is very important, and that specific rules apply to this kind of work do indeed factor into our analysis. These requirements set the standards of behavior which the employer has a right to expect of employees. Thus intentionally deciding to skip writing down what you are doing as you are doing it might not be a violation of the standard of behavior an employer has a right to expect for a fast food manager, it would be a violation such standards for a nurse administering medications. Beyond that, however, the law remains the same. Mere incapacity, mere negligence, and isolated instances of poor judgment are not disqualifying even in the health care field. For example, the cases discussing these principles include commercial drivers who have to be specially licensed and whose job performance can endanger lives. *E.g. Lee v. Employment Appeal Board*, 616 NW2d 661 (Iowa 2000). The cases include one with an error in nursing care. *Infante v. Iowa Dept. of Job Service*, 364 N.W.2d 262, 265 (Iowa App. 1984). The definition of misconduct does not change from case to case. Rather the application of that definition changes. So the "standards of

behavior which the employer has the right to expect of employees” certainly does take into account that we are dealing with a nurse administering medications. But whether a worker has shown a “willful or wanton disregard” for those standards, or engaged in equally culpable negligence, is the same no matter what the job is. See *Navickas v. Unemployment Comp. Review Bd.*, 787 A. 2d 284 (Pa. 2001); *Messer & Stilp v. Dept. Of Employment Sec.*, 910 NE 2d 1223 (Ill. App. 2009); *Kakkanatt v. Oklahoma Employment Sec. Com’n*, 183 P. 3d 1032 (Okla App. 2008).

We find that the Employer has proven a pattern of carelessness by the Claimant of such a degree of recurrence as to constitute misconduct under rule 24.32(1)(a). Specifically, we conclude that the employer has proven a pattern of carelessness by the Claimant that is of “equal culpability” to a “deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees.” “Culpability” is defined by Black’s Law Dictionary to mean “blameworthiness.” See also *Webster’s Third International Dictionary, Unabridged*, (1961)(giving “blameworthiness” for definition of culpability). Black’s goes on to provide that even in criminal cases “culpability requires a showing that the person acted purposely, knowingly, *recklessly*, or *negligently* with respect to each material element...” The word “culpable” is defined in Black’s to mean “1. Guilty; *blameworthy* 2. *Involving the breach of a duty*.” Webster’s massive unabridged dictionary notes that the stronger sense of “culpable” meaning “criminal” is in fact “obsolete.” Instead for modern definitions of “culpable” the 3rd unabridged gives “meriting condemnation or censure esp. as criminal <~ plotters> <~ homicides> or as *conducive to accident*, loss, or disaster <~ *negligence*>.” *Webster’s Third International Dictionary, Unabridged*, (1961)(emphasis added). Applying the standards of rule 24.32(1)(a) governing repeated carelessness we find that the claimant’s pattern of carelessness proven on this record demonstrates negligence of such a degree of recurrence as to constitute culpable negligence that is as equally culpable as intentional misconduct. Thus regarding this case as one of negligence, we find that disqualifying misconduct was proven.

Kim D. Schmett

James M. Strohman