

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PENNY DONNELLY**  
Claimant

**APPEAL NO: 11A-UI-14939-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MERCY HOSPITAL**  
Employer

**OC: 10-23-11**  
**Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the November 14, 2011, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 12, 2012. The claimant participated in the hearing. Sheryl Knutson, employee relations manager, and Bunny Morrison, nurse manager, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two were admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time ICU charge nurse for Mercy Hospital from February 11, 2002 to October 20, 2011.

On September 12, 2011, the claimant received a final written warning and three-day suspension for a serious medication error (Employer's Exhibit One). Another nurse asked the claimant to administer pain medication to a patient and the claimant agreed to do so. The claimant pre-charted that she gave the patient the medication. Pre-charting is a violation of the employer's policy, as it indicates that she has done something she has not actually done yet. The claimant did not take the MAR into the patient's room and therefore could not check the patient's wristband, containing the patient's name and birth date, against the MAR information. The nurse who asked the claimant to administer the medication passed by a different patient's room as the claimant gave that patient the medication and the nurse realized the claimant was giving the medication to the wrong patient. The patient had the tablet in her mouth when the nurse caught the claimant's error and stopped the patient from swallowing the pill. The claimant's actions violated the employer's medication administration policy as well as the National Patient Safety Goal – Patient Identification.

On October 13, 2011, the claimant had two patients in the ICU. One of the patient's was experiencing respiratory and blood glucose problems that required immediate intervention (Employer's Exhibit Two). The claimant called the patient's physician for orders regarding the respiratory issue and treated the low blood sugar by turning off the insulin (Employer's Exhibit Two). She was supposed to take a second glucose level within 15 minutes but instead left the floor to go downstairs to get coffee, even though the ICU had coffee available. The charge nurse questioned her about her decision to go get coffee before she left, but the claimant chose to proceed to get coffee and was, consequently, not available to take the second blood glucose level reading 15 minutes after the intervention (Employer's Exhibit Two). The claimant also received physician's orders on two of her patients but did not follow the National Patient Safety Goal Policy that requires telephone orders to be written down and read back to the doctor at the time the order is given (Employer's Exhibit Two). The claimant did not write all orders down at the time they were received (Employer's Exhibit Two).

The claimant received a verbal warning September 1, 2011, for lack of professional behavior; a suspension and final written warning and was placed on probation for 90 days September 12, 2011, for the medication error and pre-charting something she had not done yet; and a verbal warning October 19, 2011, for returning the blood glucose machine to the holder with a lot of blood on it after doing a blood sugar test October 11, 2011 (Employer's Exhibit Two). After reviewing the claimant's actions October 13, 2011, and the previous disciplinary steps taken, the employer terminated the claimant's employment October 20, 2011, for inconsistent professional behavior and ongoing issues with patient safety rules.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job 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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant pre-charted and made a serious medication error September 12, 2011, which could have caused harm to the patient and was easily prevented had she followed the employer's policies and procedures. She also chose to leave the ICU to get coffee while her patient was in distress October 13, 2011, despite being questioned by the charge nurse about whether she thought that was a good time to leave the floor to get coffee, and was then not available to do the required follow-up blood glucose level check 15 minutes after administering treatment. Additionally, she failed to write and read back all of the physicians' orders she received that night. While all nurses have a duty to their patients, ICU nurses have an even higher duty, as those patients are in the most distress. The claimant's decision-making September 12, 2011, and especially October 13, 2011, was inappropriate and negligent and lacked the professionalism required by an ICU nurse. The claimant put her patient in jeopardy by choosing to go get coffee instead of remaining on the floor and by failing to write down and read back the physicians' orders. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits must be denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

**DECISION:**

The November 14, 2011, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw