

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER L EVANS

Claimant

APPEAL NO. 09A-UI-16882-DW

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA

Employer

OC: 10/18/09

Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed a November 3, 2009 decision (reference 01) that concluded the claimant was qualified to receive benefits and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. An in-person hearing was held on April 21, 2010 in Cedar Rapids. The parties were properly notified about the hearing. The claimant participated in the hearing with her attorney, Marcus Mills. David Bergeon, Attorney at Law, represented the employer. Doug Vance, the loss prevention security director, and Jody Kurtt testified on the employer's behalf. Mary Eggenberg and Mark John Evans observed the hearing. During the hearing, Claimant Exhibits A through E and Employer Exhibits One and Two were offered as evidence. Claimant Exhibits A through D and Employer Exhibits One and Two were admitted as evidence. As of the date of this decision, Claimant Exhibit E is not admitted as evidence. The employer's objection regarding relevance of Claimant Exhibit E is sustained. Based on the evidence, the arguments of the parties, and the law, the following findings of fact, reasoning and conclusions of law, and decision are entered.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The employer rehired the claimant in 1999 to work as a full time, weekend nurse in the pediatric intensive care unit. During her employment, the claimant did not receive any disciplinary warnings and her evaluations exceeded expectations. (Claimant Exhibit B.) The claimant understood the employer's policies regarding medication management, controlled substances and using the Pyxis. (Employer Exhibit One.) Specifically, the employer's policies provided: medication must be used within 30 minutes of being drawn; no medication shall be kept by a patient's bedside unless a procedure was being performed; unused medication must be thrown away behind closed doors with two people present, employees are not to use another employee's password to log onto the Pyxis or computer system, and all inventories are to be completed by two staff. (Employer Exhibit One.)

When the pediatric unit was redesigned, nurses, including the claimant, were told they could keep unused medication in a locked drawer. The nurses expressed concerns about the employer's wasting policy because their patients were children who could need constant monitoring. Because of the policy and a nurse's inability to leave a patient some nurses documented wasting at the end of the shift by adding up what meds they had drawn and subtracting the amount they had administered. The second nurse, who witnessed the wasting procedure, trusted the nurse as to what amount was discarded so the wasted narcotic medication could be documented.

Because of complications from an earlier surgery in late 2008, the claimant took pain medication to get through her shift when she worked. She informed the employer she was working with the Pain Clinic. (Claimant Exhibit A.)

The weekend of September 12 -13, 2009, the claimant was assigned a 20-month child who was on dialysis and a ventilator. The claimant was often assigned very difficult patients. This patient was very difficult to sedate. The equipment used by the patient was equipment the claimant was not familiar with using and alarms on the equipment continually went off. When the claimant relieved the previous nurse, there were medications left at the patient's bedside. Since this child was in distress and in constant pain, she did not leave the patient during her shift. The claimant tried various medications to sedate the patient to make the patient more comfortable. By the end of her shift with this patient, the claimant was in pain.

During this shift, the claimant did not document waste of narcotics she had obtained for the patient. After co-workers reported the claimant behaved strangely, the employer obtained a computerized report to find out what narcotics she had recently obtained and learned there were several controlled substances that were not accounted for by a documented waste report. (Claimant Exhibit A.) Initially, the employer thought the claimant might have been diverting controlled medication for her own use.

The employer first talked to the claimant on September 17. During meetings on September 17, 29 and October 4, the claimant told the employer she leaves narcotics in the room. Since the amount administered is small, she reuses the remaining medication for subsequent doses she administered to the patient. The claimant has used medication other nurses have left in the room and she leaves medication for other nurses to use in a patient's room in a locked drawer. The claimant informed the employer she does not always document wasted medication.

During some of her shifts, the claimant found it very difficult to document waste in accordance with the policy because of the nature of the care she provided to children on the pediatric intensive care unit. One time, the claimant used another nurse's password to complete an inventory at the end of the shift for the other nurse. There was no discrepancy in the inventory.

Shortly after the weekend of September 12-13, when the employer performed an audit, there were only two patient rooms that had medication by a patient's bedside and a medical procedure was being performed. When the claimant admitted she did not follow the employer's procedure all the time, the employer got the impression the claimant had no plans to follow the employer's procedure. While the claimant followed the procedure at times, she concluded that if it were in the patient's best interests to stay with the patient instead of leave to waste medication not used, she would opt to give the patient the care that was needed. The claimant asked the employer to review the standard of practice in the pediatric intensive care unit because using withdrawn medication a number of times and keeping the medication in a locked drawer was not unusual in this unit.

On October 13, 2009, the employer discharged the claimant for violating several policies regarding controlled substances: using medication within 30 minutes of the medication being withdrawn or wasting the portion not used, keeping medication in the room, and failing to document waste. The employer concluded the claimant did not divert any controlled substance for her personal use.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (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. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The evidence suggests the nurses in the pediatric intensive care unit could not always follow the employer's controlled substance policy. Although the employer's computerized reports indicated other nurses documented waste more than the claimant, the majority of the claimant's undocumented waste occurred the weekend of September 12-13. This weekend the claimant provided constant intensive care to a 20-month old child. Not only was the child very ill, but it was very difficult to sedate the child so the child would be comfortable. Additionally, the claimant had to deal with alarms on the equipment monitoring the child frequently going off. The claimant experienced a great deal of stress this day and at the end of her shift, she was in pain. Since her charge nurse came into the patient's room periodically during the claimant's shift, the facts do not indicate the claimant did anything that triggered the charge nurse to report any issues. As the result of a very stressful shift, the claimant did not document wasted medication.

The evidence suggests that management in the pediatric intensive unit knew and did not object to controlled medication being used a multiple of times by allowing unused meds kept in a locked drawer except when audits were completed. With the exception of the weekend of September 12-13, the claimant's undocumented waste does not appear to be out of line.

The employer established justifiable business reasons for discharging the claimant. She admitted she violated the employer's policies. However, in the pediatric intensive care unit, the claimant's testimony that management knew that she and other nurses did not follow the employer's policy is credible. Since the employer's policy was not strictly enforced in the pediatric intensive care unit and management knew this policy was not followed, the facts do not

establish that the claimant committed work-connected misconduct. Therefore, as of October 18, 2009, the claimant is qualified to receive benefits.

DECISION:

The representative's November 3, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for justifiable business reasons. The claimant did not, however, commit work-connected misconduct. As of October 18, 2009, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css