

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**DARCI J KITCHEN  
410 E JEFFERSON ST  
WINTERSET IA 50273**

**GENESIS DEVELOPMENT  
824 ALLEN ST  
BOONE IA 50036**

**Appeal Number: 04A-UI-05675-AT  
OC: 04-18-04 R: 03  
Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Darci J. Kitchen filed a timely appeal from an unemployment insurance decision dated April 30, 2004, reference 01, which disqualified her for benefits. After due notice was issued, a telephone hearing was held June 9, 2004 with Ms. Kitchen participating. Site Administrator Janet Strange participated for the employer, and Exhibit 1 was admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Darci J. Kitchen was employed as a community

support staff person by Genesis Development from April 28, 1997 until she was discharged April 13, 2004. Ms. Kitchen was a certified medication manager. As such she was prohibited by law from, among other things, dispensing her own personal medication to her clients. On May 13, 2004 Site Administrator Janet Strange learned that on April 4 and April 5, 2004, Ms. Kitchen had dispensed her own over-the-counter medication to two different clients. In addition to violating state law, this also violated the employer's policies. Ms. Kitchen was then discharged.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Kitchen was discharged for misconduct in connection with her employment. It does.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Ms. Kitchen did not dispute the employer's testimony that Ms. Kitchen had, in violation of state law and company policy, dispensed her own personal medication to two of the employer's

clients. Deliberate actions contrary to law and company policy are sufficient to establish misconduct. Benefits are withheld.

The allegation that Ms. Kitchen had used inappropriate language in the presence of staff and clients need not be addressed because the other evidence is sufficient to establish disqualifying misconduct.

DECISION:

The unemployment insurance decision dated April 30, 2004, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

tjc/tjc