

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PATRICIA L MARTENS

Claimant

APPEAL 17A-UI-00482-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JACKSON RECOVERY CENTERS INC

Employer

OC: 12/11/16

Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the January 4, 2017 (reference 01) unemployment insurance decision that allowed benefits based upon claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on February 6, 2017. The claimant, Patricia L. Martens, participated personally. The employer, Jackson Recovery Centers Inc., participated through witnesses Sharon Miller; Lori McKinlay; and Brenda Cain. Employer's Exhibits 1 – 7 were admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance records including the fact finding documents.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

Did claimant voluntarily quit the employment with good cause attributable to employer?

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a registered nurse ("RN"). This employer is operates a substance abuse treatment center. Claimant was employed from November 4, 2015 until December 13, 2016 when she was discharged from employment. Claimant's job duties included caring for patients, including administering medication.

On December 10, 2016 a patient became aggressive with claimant and other staff. The patient was punching holes in the wall, punching his bed, using profanity, and stating that he could not calm himself down. See Exhibit 7. Claimant called the patient's doctor and received an order to administer an injection of medication. See Exhibit 7. The medication was administered without

incident. See Exhibit 7. Approximately twenty minutes later the patient came out of the room again and stated that he could still not calm down. See Exhibit 7. Claimant called the patient's doctor again and the doctor prescribed a different injection medication. Claimant took what she believed was the correct medication from the lock box and injected the patient. Claimant looked at the medication briefly because she was acting quickly to avoid the patient from hurting staff or other patients. Claimant did not confirm the type of medication and dosage that she was to inject. Claimant administered the wrong medication to the patient. Claimant's actions were not intentional.

Claimant was not aware that she had administered the wrong medication to the patient until December 12, 2016 when she was called by Ms. McKinlay and told not to return to work for her scheduled shift. Claimant was not interviewed regarding this incident prior to the decision to discharge her being made. Claimant was told to meet with Ms. McKinlay on December 13, 2016, which she did. Claimant was discharged at that time. Claimant had never received discipline during the course of her employment with regard to administering incorrect type or dosage of medication.

Claimant received benefits in the amount of \$2,577.00 for the eight weeks between December 17, 2016 and January 28, 2017. Employer did participate in the fact finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed.

As a preliminary matter, I find that the Claimant did not quit. Claimant was discharged from employment.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.*

Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Further, poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

In this case, claimant's actions were not misconduct. They were an isolated incident of poor judgment and claimant is guilty of no more than "good faith errors in judgment." 871 IAC 24.32(1)(a). Instances of poor judgment are not misconduct. *Richers v. Iowa Dept. of Job Services*, 479 N.W.2d 308 (Iowa 1991); *Kelly v. IDJS*, 386 N.W.2d 552, 555 (Iowa App. 1986).

Her actions were not an intentional and substantial disregard of the employer's interest which rises to the level of willful misconduct. As such, benefits are allowed. Because benefits are allowed, the issues of overpayment and chargeability are moot.

DECISION:

The January 4, 2017 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

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