

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PATRICIA TOALA**  
Claimant

**APPEAL NO: 130-UI-13271-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE UNIVERSITY OF IOWA**  
Employer

**OC: 08/04/13**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's September 10, 2013 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. A hearing was held on October 10, 2013. The claimant did not participate at the October 10 hearing, but the employer did. Based on evidence presented by the employer, the administrative law judge issued a decision that disqualified the claimant from receiving benefits. See decision for appeal 13A-UI-10555.

The claimant appealed the administrative law judge's decision because she had not received the hearing notice. The Employment Appeal Board remanded this case to the Appeals Section for another hearing.

On January 7, 2014, the claimant participated at a hearing. Mary Eggenburg, a benefits specialist, and Sheryl Lang, the nurse manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer the fall of 2012. The claimant is a registered nurse.

The employer's diversion report in June showed the claimant as a high user of controlled substances. The June 2013 diversion report did not raise any "red flags" since the claimant cared for post-op patients who required controlled substances for controlling pain after surgery.

In mid-July 2013, the claimant was involved in an incident with a patient where the charge nurse did not believe the claimant had responded appropriately. When the employer talked to the

claimant about the mid-July incident, someone commented that the claimant's personality had changed. Lang then asked a nurse manager to review diversion reports. From June 6 through July 31, the employer discovered about 20 incidents where the claimant did not document wasted medication. Wasted medication occurs a patient is not given the entire drug that was removed for use. The employer's policy requires employees to have another employee present when the wasted medication is disposed of in a sink. Between June 6 and July 31, the claimant did not document all the controlled substances she amount wasted. The diversion report also revealed that the claimant took two doses of a controlled substance but only one was prescribed for the patient. The claimant got the second doses after the first dose spilled. The claimant did not document that the first dosage had been spilled or wasted.

The claimant's job was not in jeopardy before July 2013. After learning the claimant had not been documenting some wasted narcotics, the employer talked to her on August 2. The employer asked the claimant if she could explain where the wasted narcotics were and why she had not properly documented the waste even though she understood this procedure. The claimant told the employer she had not been herself recently because of personal issues she had recently learned about concerning her marriage. The claimant felt she "zoned in and out" because her personal problems distracted her at work. The claimant admitted she had gotten sloppy about documenting wasted medication and did not follow the proper procedure. The claimant denied she used any of the narcotics for herself. Instead, she put the wasted narcotic down the sink, but did not document the amount or have another employee present when she did this. The employer placed the claimant on administrative leave on August 2.

After management reviewed the facts, the employer discharged the claimant on August 9, 2013. The employer discharged the claimant because she failed to comply with the policy and standard of practice in connection with wasting controlled substances.

The claimant established a claim for benefits during the week of August 4, 2013. She filed claims for the weeks ending August 17 through September 28, 2013. She received her maximum weekly benefit amount of \$408.00 for each of these weeks.

#### **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 willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

Since the claimant's job was not in jeopardy before July 2013 and she recently discovered marital issues, the claimant became easily distracted at work and was not herself in June and July. The claimant's testimony that she did not personally use any of the undocumented wasted narcotics is credible.

She admitted on August 2 she had been sloppy and careless about properly documenting wasted controlled substances. Given the fact she had recently learned about some disturbing information concerning her marriage, the claimant's failure to perform her job satisfactorily was the result of her temporary inability to remain focused at work. Although, the claimant believed she gave her patients good care, she acknowledged that she should have taken time off to address issues that affected her.

The employer established justifiable business reasons for discharging the claimant. The evidence does not establish that the claimant intentionally failed to follow the correct procedures concerning documentation of wasted narcotics. The claimant's actions do not rise to the level of work-connected misconduct. As of August 4, 2013, the claimant is qualified to receive benefits. Therefore, she is legally entitled to receive benefits and has not been overpaid any benefits.

**DECISION:**

The representative's September 10, 2013 determination (reference 01) is affirmed. The employer discharged the claimant for justifiable business reasons, but the claimant's actions do not rise to the level of work-connected misconduct. As of August 4, 2013, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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