

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REX COVINGTON
Claimant

APPEAL NO: 14R-UI-10299-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

DONALD BAUERKEMPER
ZION RECOVERY SERVICES INC
Employer

OC: 07/20/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 8, 2014, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 22, 2014. The claimant participated in the hearing. Richard Mullen, Residential Supervisor, participated in the hearing on behalf of the employer.

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 full-time unit technician for Zion Recovery Services from September 4, 2012 to July 21, 2014. The employer treats clients with substance abuse issues. The claimant was discharged after a client was able to access narcotic medication as he was being voluntarily discharged from the treatment facility.

On July 21, 2014, a claimant who was in the facility voluntarily chose to leave. The claimant was assigned to check him out and insure he had his personal property, cleaned out his locker and had all of his medications. The claimant and the client were in a room where the medications were locked up and only one client is allowed in at a time. The claimant removed the client's medication from the locked cabinet but forgot to lock the cabinet, as required by the employer's policy, after getting his medication out. He then briefly left the room and the client took another clients hydrocodone, which had recently been filled and either contained 30 or 60 pills. The claimant failed to follow the employer's strict medication control policy and placed the client, the client whose medication was stolen, and the community, at risk.

The client was able to leave the facility, with the stolen medication, undetected. The employer called the police but the client denied taking the medication. The only time the client had

access to the medication room was when the claimant was checking him out. The prescription narcotic medication was the client's drug of choice.

The medication room remains locked unless a staff member is in the room or checking a client out of the facility. The cabinet where the medication is kept is also locked except when staff unlocks it to get a client's medication out. He is then expected to lock the cabinet so a client cannot access it.

Every year the employer conducts training on the medication dispensing policy. During staff meetings the employer goes over any medication errors and the good practices involving medications. The claimant was aware of the client's drug of choice and substance abuse issues. The employer held several sessions about the client's drug seeking behaviors and took precautions to prevent the claimant from accessing the medication room and cabinet. The employer's residential supervisor has worked for the facility for 11 years and this was the first incident of a client gaining access to medication.

The claimant had not received any prior verbal or written warnings for anything during his tenure with the employer. The employer described him as a dependable employee but terminated his employment July 21, 2014, because of the nature of the violation and because his actions placed the client in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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).

The employer has the burden of proving disqualifying misconduct. 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. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the claimant clearly violated the employer's medication policy by leaving the medication cabinet unlocked when he left the room when checking the client out of the facility, which allowed the client to access another client's hydrocodone and steal approximately 30 or 60 pills, his actions were an isolated incident. The client had never received a verbal or written warning since he began his employment with the facility. He acknowledges he made a "horrible" and "terrible" mistake and believes he deserved to be terminated by the employer. Although it was a serious mistake, there is no evidence his actions were willful or intentional misconduct. Consequently, the administrative law judge must conclude the employer has not met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The August 8, 2014, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css