

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

DONNA J LOFTUS

Claimant,

and

MID-STEP SERVICES INC

Employer.

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HEARING NUMBER: 10B-UI-10365

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-A

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Employer appealed this case to the Employment Appeal Board. All members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds the administrative law judge's decision is correct. With the following modification, the administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED** with the following **MODIFICATION**:

The Employment Appeal Board would modify the administrative law judge's Findings of Fact as follows:

The claimant reported in the daily log (Exhibit 15) that the resident had not had his medication and that she destroyed the medication at 9:20 p.m.

The Employment Appeal Board would modify the administrative law judge's Reasoning and Conclusions of Law as follows:

The claimant's actions are mitigated by the fact that she documented *not* giving the medication in the daily log report and having disposed the medication in front of witnesses. The claimant's actions were, at worst, an isolated act of poor judgment as no prior disciplines were cited in the employer's decision to discharge the claimant.

John A. Peno

Elizabeth L. Seiser

DISSENTING OPINION OF MONIQUE F. KUESTER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge's decision. After careful review I believe the claimant was terminated for clearly violating the employer's rules and regulations for working with mentally and physically challenged children and adults.

The claimant was a long-term employee who had extensive training and should have been fully aware of the employer's policies and expectations. It is clear that the claimant failed to administer the daily medication to the resident and willfully discarded the medication in an improper manner. I find it creditable that the claimant made the statement to the co-worker, "I guess he doesn't want this medication."

Specifically, I concur with the employer that the claimant was culpable of the following:

- Failure to administer the medication to the resident;
- Deliberately threw the medication in the trash which is not the proper way to discard the medication;
- Testified that this was not the first time she had discarded medication in this manner *because, everyone else does it too*;
- Told a co-worker that she failed to give the medicine simply because "he didn't want it; and
- Falsified official documents stating that she had in fact given the medication to the resident.

Any one of these actions, alone or taken together, constitutes misconduct. Her behaviors were deliberate and represented a material breach of duties and obligations arising out of the employee's contract of employment. For all the foregoing, I would deny benefits.

Monique F. Kuester

AMG/kjo