

**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**

**SHERRY MANGOLD  
241 HOLIDAY LODGE RD  
NORTH LIBERTY IA 52317**

**DISCOVERY LIVING INC  
220 NORTHLAND CT NE  
CEDAR RAPIDS IA 52402**

**Appeal Number: 05A-UI-06165-E  
OC: 05-08-05 R: 03  
Claimant: Appellant (2)**

**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/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 31, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held in Cedar Rapids, Iowa, before Administrative Law Judge Julie Elder on July 21, 2005. The claimant participated in the hearing. Deborah Berg, Human Resources Manager; Mary Hand, Community Living Coordinator; and Carol Sadoris, Director of Residential Services, participated in the hearing on behalf of the employer.

#### 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 community living assistant for Discovery Living from March 15, 2001 to May 11, 2005. On January 24, 2005, she received a written warning for failing to initial the kardex for medication administration 27 times between August and November 2004. The employer had not been routinely reviewing the medication administration initialization but, after discovering that another employee had failed to consistently do so, the employer checked other medication administration documents and several employees were disciplined. On April 4, 2005, the claimant was suspended from two shifts without pay from one of the houses she worked at after the employer received a phone call from the other house that the claimant made a medication error. The resident had missed two days of one medication and it appeared the claimant ripped up the original card and threw it away when some other employees had already initialed it indicating medication had been given. The claimant said she tore it up because it was sloppy. The claimant wrote up a new one and missed copying and highlighting so one patient missed a dose of medication and one patient received a dose incorrectly. In May 2005, the employer started using a med-minder, which contained all medications for a patient for one week. The box was clear so employees could see which medications had been given on a certain day. The med-minder was filled weekly by one employee and checked by another employee. On May 10, 2005, the employer discovered an error in that two medications were left in the med-minder. The claimant had initialed that she had given one of the medications but did not mark that the other had been given. The employer felt that the claimant was not improving and was a liability. It had mentioned the problem during the claimant's evaluations. The claimant admitted making medication errors but testified she had trouble seeing the boxes and felt that she was possibly dyslexic. She made an appointment at the University of Iowa Hospitals and Clinics to be tested but was told because of her age they would not test her so consequently she was never diagnosed with a medical problem.

#### 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 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).

The employer has the burden of proving disqualifying job 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 willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The definition of misconduct as stated above has not been met in this case. The claimant clearly made some medication errors. In order for her errors to constitute misconduct, however, her actions must be deliberate acts or omissions. The claimant apparently made good faith errors in judgment or committed ordinary acts of negligence in isolated incidents when making medication errors. Whether this was done through carelessness or because of some possible undiagnosed medical problem is difficult to say with certainty. The administrative law judge does not believe the claimant acted intentionally or with malice in failing to follow the medication schedule and it does not appear the employer believes the claimant acted with evil intent either. She was, however, unable to consistently perform her job to the standards set by the employer. Because there was no intent on the part of the claimant to fail to perform her job to the employer's standards, the administrative law judge cannot conclude the claimant's conduct constitutes disqualifying job misconduct as defined by Iowa law. Consequently, benefits are allowed.

#### DECISION:

The May 31, 2005, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/tjc