

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

DENISE A DAO  
21338 FALCON AVE  
WELLSBURG IA 50680

CARE INITIATIVES  
C/O TALX – JOHNSON & ASSOC  
PO BOX 6007  
OMAHA NE 68106 6007

Appeal Number: 06A-UI-05075-DWT  
OC: 11/20/05 R: 02  
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

STATEMENT OF THE CASE:

Denise A. Dao (claimant) appealed a representative's May 8, 2006 decision (reference 05) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Care Initiatives (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known address of record, a telephone hearing was held on May 30, 2006. The claimant participated in the hearing. Lynn Corbeil, attorney, represented the employer. Brenda Nichols, the director or nurses, and Monte Priske, the administrator, appeared on the employer's behalf. During the hearing, the employer offered Employer's Exhibits One through Seven. These documents were identified but they were not admitted. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on December 21, 2005. The claimant, a registered nurse, worked as a charge nurse. Nichols was the claimant's supervisor.

On March 28, 2006, Nichols talked to the claimant and gave her a documented verbal warning for several problems. One of the issues addressed was proper documentation of meds given to residents and the steps the claimant needed to take to make sure residents received their medication.

On April 10, residents A and B sat next to one another at supper. The claimant set Resident B's medication on the table. Resident A saw the meds and assumed the medication was his and swallowed the medication. Resident A does not take medication at the supper meal, but Resident B does. The claimant did not actually see Resident A take the medication. Resident B, however, told the claimant he had not received his medication. After the claimant realized Resident A swallowed medication that had not been prescribed for him, the claimant contacted Nichols, monitored Resident A that evening, and gave Resident B his medication.

On a medication report, the claimant reported Resident A had reached over and taken Resident's B's medication. Since this was not typical behavior for Resident A, the employer talked to both residents individually. During their separate conversations, both residents reported the claimant had given Resident A the medication. Resident A took the medication without thinking, even though he does not take medication with his evening meal. Neither resident thought the claimant knew Resident A took the medication until after B told her he had not received his medication.

Based on the residents' reports, the employer concluded the claimant intentionally failed to accurately describe how Resident A took Resident B's medication. Since the claimant attended training sessions on the importance of documenting in detail exactly what occurs, the employer concluded the claimant violated her professional code of conduct and the employer's documentation policy. The employer discharged the claimant on April 11 for intentionally documenting an inaccurate account regarding the April 10 medication error.

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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant understood the importance of accurate documentation. Since the claimant did not see Resident A take or reach for the medication, she made a reasonable assumption when she documented this med error or incident. It is now known where the claimant placed the medication, but Resident A assumed it was his and took it. There are a number of reasons why Resident A may have assumed the medication was his. The employer concluded the claimant mistakenly gave Resident A the medication and then attempted to cover up this mistake. Another possible explanation is that someone inadvertently moved the medication closer to A. Since the claimant did not see Resident A actually reach over and take the medication, she used poor judgment when she wrote this comment on the med error report.

After the claimant realized a medication error occurred, she contacted Nichols. As the claimant asserted, she could have but did not attempt to "hide" what had happened by not calling Nichols as soon as the claimant became aware of what happened. This factor indicates the claimant did not intentionally or substantially disregard the employer's interests. Instead, she put the employer on notice as to what had happened. The claimant is not without fault in this incident, but the evidence does not establish that she committed work-connected misconduct. Therefore, as of April 16, 2006, the claimant is qualified to receive unemployment insurance benefits.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

#### DECISION:

The representative's May 8, 2006 decision (reference 05) is reversed. The employer established compelling business reasons for discharging the claimant. As of April 16, 2006, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

dlw/kjw