

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HALA ABUISSA

Claimant

APPEAL NO: 13A-UI-06783-S

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA

Employer

OC: 05/12/13

Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The employer appealed a department decision dated June 3, 2013, reference 01, that held the claimant was not discharged for misconduct on May 13, 2013, and benefits are allowed. A hearing was held in Cedar Rapids, Iowa on August 13, 2013. The claimant, her husband as observer, and Attorneys, Charles Gribble, and Luke DeSmet, participated. David Bergeon, Labor Relations representative, and Brenda Carmody, Pharmacy Manager, participated for the employer. Employer Exhibits 1 – 11 and Claimant Exhibits A – G was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant began employment on June 11, 2007, and last worked for the employer as a full-time clinical pharmacist on May 9, 2013. Claimant was evaluated by Dr. Douglas Hand who issued an October 17, 2009 report titled medical information request form necessary to address employee work needs. He diagnosed a cataract eye condition that affected her visual function (clarity and color perception). He noted claimant had been able to overcome the disability for the past two years. Pharmacy Manager Carmody notified claimant on October 6, 2009 she was aware of her health condition and the employer supports the ADA to identify where accommodations are needed.

On January 16, 2013 a Faculty Staff Disability Services (FSDS) representative sent a letter to Dr. Hand with a medical information form to identify health limitations, and use the information to evaluate reasonable accommodations that are available to her position. Dr. Hand responded with the form information January 19. He recommended limit small detail, appropriate light and extra time to complete task. He affirmed his cataract diagnosis.

The employer had a work site evaluation performed by OD Mark Wilkinson/Director Vision Rehabilitation Service on January 30. He recommended a function test to whether claimant can discriminate similar sized and colored medications from one another.

Claimant was off work for one month. An employer representative met with claimant and issued a written report on March 12, 2013 to define criteria for claimant's return to work. The report identifies competencies, accommodations required to address medical limitations, criteria for determining accuracy with bullet points that work duty limitations and the use of accommodations.

Employer FSDS representative orally advised claimant to refrain from dispensing medications to patients on March 22, 2013.

Pharmacy management questioned whether claimant was dispensing medication. Employer watched security videos for April 28 and April 30 showing claimant standing at the pharmacy counter waiting on patients. It concluded claimant was dispensing medications to patients.

The employer conducted an investigatory meeting on May 8. It questioned claimant whether she had dispensed medication to a patient. She responded yes. In the hearing she explained she a patient whom she knew well and dispensed medication when no other pharmacist was available. Claimant admits she waited on patients but the employer photo exhibits do not show her dispensing medication.

The employer terminated claimant with a written notice on May 13, 2013 for violating the no counseling/dispensing work restriction on at least five (5) occasions on April 28 and April 30, 2013. Although the employer listed previous discipline, it was not considered as a discharge reason. The purpose was to show the employer followed progressive disciplinary policy.

REASONING AND CONCLUSIONS OF LAW:

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.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on May 13, 2013.

The employer did not offer any pharmacy witness that claimant dispensed medication to or counseled any patient on April 28 or April 30, 2013. It had gone at great lengths to identify any claimant functional work limitation and reasonable accommodation. While there is substantial written documentation for this effort, there is no written statement issued to claimant that she signed to restrict her from dispensing medication and/or counseling patients.

The employer photo evidence shows claimant at the pharmacy counter waiting on patients but it is not conclusive evidence she dispensed medication and counseled patients. Waiting on patient customers for their medication orders and handing it to them is not dispensing medication.

The only evidence of the restriction violation is claimant's admission she did so on one occasion to help a known patient, and the employer has not identified it as having occurred on April 28 or April 30 that is the reason for discharge. Job disqualifying misconduct is not established.

DECISION:

The department decision dated June 3, 2013, reference 01, is affirmed. The claimant was not discharged for misconduct on May 13, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css