

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LESA L WELLMAN**

Claimant

**APPEAL NO. 14A-UI-13063-S2**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE UNIVERSITY OF IOWA**

Employer

**OC: 11/30/14**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Lesa Wellman (claimant) appealed a representative's December 15, 2014 (reference 01) decision that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with The University of Iowa (employer). After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for January 20, 2015, in Cedar Rapids, Iowa. The claimant participated personally. The employer participated by Mary Eggenburg, Benefits Specialist, and Tammy Seabolt, Nurse Manager. The employer offered and Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on December 8, 2003 as a full-time staff nurse. The claimant signed for receipt of the employer's handbook. On April 29, 2014 the employer issued the claimant a written warning for unplanned absences. All the absences were properly reported and due to medical issues. The employer notified the claimant that further infractions could result in termination from employment.

On November 8, 2014 the claimant went to the narcotics dispenser and retrieved a narcotic syringe to administer to a patient. The dosage loaded in the machine for this medication was two milligrams and the patient's dose was one milligram. Established protocol would be to waste the unnecessary one milligram down the sink. The claimant took the two milligram dose to the patient's room. The claimant scanned the patient's wrist band. The computer screen displayed that the patient's dosage at one milligram. The claimant accidentally administered the two milligrams of the narcotic to a patient, rather than the one milligram correct dosage. Proper protocol would be for the claimant to have charted the activity on the patient's medication administration report (MAR) immediately. The claimant did not do this paperwork but proceeded to another patient's room.

After caring for another patient, the claimant completed the MAR for the first patient. At this time she realized she had given an incorrect dosage of the narcotic. This was about 45 minutes after she the narcotic had been administered. The claimant did not want to report the issue because she knew she would be in trouble. She checked on and positioned herself near the patient. After four hours she contacted the pharmacist, nursing supervisor, and physician. They gave her instructions and she followed those instructions. The claimant did not provide complete medical documentation.

On November 9, 2014 a computer generated a message indicating there was too much narcotic removed from the machine and the extra had not been wasted. This message alerted the employer to the situation. On November 10, 2014 the employer told the claimant to correct the documentation but the claimant did not. The employer placed the claimant on administrative leave on November 11, 2014.

While the claimant was on leave, the employer investigated the claimant's work history and found the claimant was trained on and knew the employer's policies. The claimant regularly did not complete the MAR in real time. She waited until much later to document her distribution of medication and this resulted in errors. The employer found there was missing documentation regarding narcotics and the claimant was holding drugs longer than the policy allowed. The employer terminated the claimant on November 25, 2014.

#### **REASONING AND CONCLUSIONS OF LAW:**

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).

Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. This failure resulted in errors. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

**DECISION:**

The representative's December 15, 2015 (reference 01) decision is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/can