

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORI L NYREEN
Claimant

APPEAL NO. 11A-UI-07139-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MID-STEP SERVICES INC
Employer

**OC: 05/01/11
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Lori Nyreen (claimant) appealed a representative's May 23, 2011 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Mid-Step Services (employer) for conduct not in the best interest of the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 22, 2011. The claimant participated personally. The employer participated by Sarah Hackett, Director of Nursing, and Jan Hackett, Human Resources Director.

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 February 15, 2010, as a full-time registered nurse. The claimant signed for receipt of the employer's handbook on February 15, 2010. The employer did not issue the claimant any warnings during her employment. On July 30, August 19, 2010, and May 16, 2011, the employer issued the claimant clarifications of expectations regarding attendance.

As a registered nurse the claimant understood that the Iowa Board of Nursing Practices allowed her to make judgments regarding licensed and non-licensed staff. On April 27, 2011, the claimant supervised a non-licensed staff person who had completed classroom work and passed her tests to become a medication aide. The person set up and distributed medication under the claimant's direction. On April 28, 2011, that same person was working as a direct care staff person. Under the claimant's direction, the non-licensed person set up one person's medication. The claimant was 20 seconds away in another area of the employer's location. The Director of Nursing had been seconds away from the non-licensed person on another day and the employer found this acceptable. On April 28, 2011, the claimant checked the medication the non-licensed employee set up.

On April 29, 2011, the employer learned of the claimant's actions on April 28, 2011. The employer terminated the claimant on May 2, 2011. The claimant could find nothing in the handbook or the Iowa Board of Nursing Practices that prohibited her actions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's May 23, 2011 decision (reference 01) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs