

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVIDETTA E KONNEH**

Claimant

**APPEAL NO. 06A-UI-11283-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GOOD SAMARITAN SOCIETY INC**

Employer

**OC: 11/15/06 R: 04  
Claimant: Appellant (1)**

Section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Davidetta Konneh filed a timely appeal from the November 15, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 11, 2006. Ms. Konneh participated and presented additional testimony through Activities Aide and Union Steward Jeannie Stone. Director of Nursing Paula Clarke represented the employer and presented additional testimony through Nursing Supervisor Diane Ciucci. Exhibits 1 through 10, 12, and A through D were received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Davidetta Konneh was employed by Good Samaritan Society from October 29, 2001 until October 20, 2006, when Director of Nursing (DON) Paula Clarke discharged her for recurrent negligence and/or carelessness in failing to properly secure a medication cart. The employer is a nursing facility that serves the elderly and adults with special needs. Beginning in November 2004, Ms. Konneh worked for the employer as a part-time Certified Medication Aide and continued to work in that position at the time of the discharge. Ms. Konneh worked in a secured unit for individuals suffering from Alzheimer's and/or dementia. Nursing Supervisor Diane Ciucci was Ms. Konneh's immediate supervisor. As part of Ms. Konneh's Certified Medication Aide training and her training at Good Samaritan Society, Ms. Konneh learned the appropriate protocol for securing the medication cart. Securing the medication cart was an essential part of Ms. Konneh's duties. The cart was to be locked whenever Ms. Konneh was not at the cart and/or when she did not have a clear line of vision to the cart. The medication cart contained the various medications the residents needed, including some narcotics. Ms. Konneh was aware of the diminished mental functioning of the residents she served. The residents on the unit where Ms. Konneh worked were ambulatory. Ms. Konneh was aware of the need to keep medications out of the resident's reach unless the medications were being administered pursuant to a doctor's prescription. It was Ms. Ciucci's practice to check the medication cart every time she passed it to make certain the drawers were properly secured.

The final incident that prompted the discharge occurred on October 20. Ms. Ciucci came upon the medication cart in the hallway, checked the drawers and found several unlocked. Ms. Ciucci located Ms. Konneh in a nearby dining room where she was administering a medication to a resident. From where Ms. Konneh stood in the dining room, she could not see the medication cart. Ms. Ciucci tested several drawers before the sound of the opening drawers attracted Ms. Konneh's attention. Immediately after discovering the unsecured medication cart, Ms. Ciucci alerted Director of Nursing Paula Clarke to the situation. Ms. Clarke used the facility's surveillance system to observe the location of the unsecured cart and Ms. Konneh's location in the dining room. Ms. Clarke summoned Ms. Konneh, Ms. Ciucci, and union steward Jeannie Stone to a conference. When Ms. Konneh insisted she had maintained a clear line of sight to the medication cart, the four women traveled to the dining room to investigate whether Ms. Konneh could have seen the cart from where she had been standing. Ms. Clarke, Ms. Ciucci and the union steward each concluded Ms. Konneh could not have seen the cart.

The final incident followed multiple similar incidents, the most recent of which had occurred one week prior to the discharge. A week prior to the final incident, Ms. Ciucci had discovered the medication cart in the hallway unattended, unsecured and out of Ms. Konneh's line of sight while Ms. Konneh administered a medication in a resident's room. Ms. Ciucci had reprimanded Ms. Konneh in connection with that incident. Prior to the two final incidents, Ms. Ciucci had repeatedly counseled Ms. Konneh against leaving the cart unsecured. Ms. Ciucci had also detected multiple instances where Ms. Konneh had failed to document medications issued to residents and/or other items or services provided to residents. Ms. Konneh was aware of her obligation to properly document the medications. The employer had also counseled Ms. Konneh for failing to properly secure the door to a secured unit.

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

The question is whether the evidence in the record establishes that Ms. Konneh was discharged for misconduct in connection with the employment. It does.

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 proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8).

The evidence in the record establishes that on October 20, Ms. Konneh was negligent in failing to properly secure the medication cart. The evidence demonstrates recurrent similar negligence. This negligence included failures to secure the medications cart, failure to secure the door of the secured unit, and failure to properly document medications. The pattern and circumstances of the negligence indicate a willful disregard of the interests of the employer and violations of standards of conduct the employer reasonably expected from its employees. Ms. Konneh's negligence also ran counter to the formal training/certification she underwent before commencing her work as a medication aide. Ms. Konneh was quick to see the employer's concern as harassment, but the evidence demonstrates no such harassment. Ms. Konneh asserted that she could not perform her duties in a timely matter if she was required to secure the medication cart, but the greater weight of the evidence does not support Ms. Konneh's assertion.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Konneh was discharged for misconduct. Accordingly, Ms. Konneh is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Konneh.

#### **DECISION:**

The Agency representative's November 15, 2006, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment

benefits until she has worked in and paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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