

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**HEIDI HESS  
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MAXON CITY IA 50401 3490**

**MERCY HEALTH SERVICES – IOWA CORP  
MHA UNEMPLOYMENT COMPENSATION  
PRO  
2112 UNIVERSITY PARK DR  
OKEMOS MI 48864**

**APPEAL 21A-UI-24607-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**APPEAL RIGHTS:**

**This Decision Shall Become Final**, unless within fifteen (15) days from the mailing date below the administrative law judge's signature on the last page of the decision, 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:

***Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
or  
Fax (515) 281-7191***

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.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

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.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**ONLINE RESOURCES:**

UI Appeals: <http://www.iowaworkforce.org/ui/appeals/index.html>

Claimant Handbook: <http://www.iowaworkforce.org/ui/handbook.htm>

Handbook for Employers: <http://www.iowaworkforce.org/ui/uiemployers.htm>

Employer account access and information: <https://www.myiowaui.org/UITIPTaxWeb/>

National Career Readiness Certificate through the Skilled Iowa Initiative: <http://skillediowa.org/>

Becoming a member employer through Skilled Iowa and utilizing internships: <http://skillediowa.org/>

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**HEIDI HESS**  
Claimant

**MERCY HEALTH SERVICES – IOWA CORP**  
Employer

**APPEAL 21A-UI-24607-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/13/21  
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct  
Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

The claimant, Heidi Hess, filed an appeal from the August 23, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the conclusion the claimant was discharged for conduct not in the best interest of the employer. The parties were properly notified of the hearing. A telephone hearing was held on January 4, 2022. The claimant participated and testified. The employer participated through Senior Colleague Relations Partner Heidi Willrett and Acute Operations Supervisor Pat Hill. The employer was represented by Unemployment Hearing Representative Jennifer Pierce. Exhibits A, 1, 2, 3, 4, and 5 were received into the record. Official notice was taken of the agency records.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Whether the claimant has been able and available for work after her separation?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant worked full-time as a pharmacist assistant for the employer from August 19, 2013, until June 2, 2021, when she was discharged. The claimant reported directly to Acute Operations Supervisor Pat Hill.

The employer has a practice which instructs employees to complete syringes one at a time. If multiple syringes are for the same medication and at the same dose, then it is permitted to complete them all at the same time. The practice was implemented to avoid medication errors that can result in injury or death to a patient. This practice was discussed at orientation and on a regular basis.

On June 26, 2019, the claimant's job performance was audited by the employer. A comment was left on the claimant's audit form, "[The claimant] drew up [three] different insulin doses and

left them under the hood before labeling them. Discussed with her that she should only be drawing up [one] item or [one] dose under the hood at a time.” The employer provided a copy of the audit form the claimant received. (Exhibit 5)

On May 26, 2021, the claimant loaded three unlabeled syringes of varying sizes and placed them on the shelving below the hood in the Intravenous Room. A colleague took a picture of the claimant doing this and sent them to Ms. Hill. The employer provided a copy of this photograph. (Exhibit 1)

On May 27, 2021, the claimant reported to work. The claimant was met by Ms. Hill and Pharmacist David Blaha. Ms. Hill showed the claimant the picture of her loading three syringes the previous day. In response, the claimant attempted to excuse her behavior saying she was in a hurry. After the meeting, Ms. Hill informed the claimant that she was being suspended pending further investigation.

On June 2, 2021, the claimant was terminated for the incident that occurred on May 26, 2021.

The claimant had not been warned for similar misconduct in the past. The employer provided copies of warnings the claimant received over the course of her employment. These documents are not described in greater detail because they warned her regarding other categories of behavior. (Exhibits 2, 3, and 4)

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. The administrative law judge further concludes the issue whether the claimant was able and available for work is moot.

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 establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events.

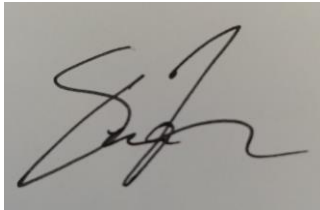
The administrative law judge finds the claimant engaged in the behavior described on May 26, 2021. He makes this finding because the claimant gave inconsistent testimony regarding this point. On the one hand, the claimant testified the chambers of the syringes were the same, but on the other hand, the claimant denied being the person shown in Exhibit 1.

The administrative law judge finds the claimant's behavior on May 26, 2021, was disqualifying misconduct. The claimant had previously been told not to prepare multiple syringes and did so

anyway. This practice can result in grievous harm to patients. The claimant was terminated for work-related misconduct. Benefits are denied.

**DECISION:**

The August 23, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as 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 issue regarding whether she was able and available to work is moot.



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Sean M. Nelson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 725-9067

February 7, 2022  
Decision Dated and Mailed

smn/mh