

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAMELA J FLYNN

Claimant

APPEAL NO. 11A-UI-14069-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

SKYLINE CENTER INC

Employer

OC: 10/26/11

Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated October 26, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 22, 2011. Claimant participated. The claimant was represented by Blake Parker, attorney at law. Employer participated by Lisa Hammond, human resources director and Jennifer Green, assistant community living director. The record consists of the testimony of Lisa Hammond; the testimony of Jennifer Green; and the testimony of Pamela Flynn.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer provides services to individuals with physical or mental disabilities. The claimant was hired on March 2, 2009, as a direct care manager. The claimant worked with individuals in their homes. The claimant primarily worked the third shift, which involved overnight care. She was a full-time employee. The claimant's last day of work was October 4, 2011. She was terminated on October 11, 2011.

The incident that led to the claimant's termination occurred on October 3, 2011. One of the individuals for whom the claimant provided care had a medication for anxiety. The medication was to be given as needed but no more than twice a day. The claimant made no documentation that she gave medication to the claimant on October 3, 2011. On October 4, 2011, the claimant made a note that she had given the medication at 7:18 a.m. on October 3, 2011. She also noted that she gave the medication at 7:11 a.m. on October 4, 2011. The claimant's failure to note that she gave medication on October 3, 2011, led to the individual receiving three doses of medication within a 24-hour period instead of only two doses as prescribed. The individuals who worked after the claimant on October 3, 2011, gave the

medication two times because the claimant did not write down the dose she gave at 7:18 a.m. until the next day.

The claimant had previous medication errors. The claimant was suspended for three days as a result of a medication error on August 24, 2011. The claimant had prepared a medication dosage for individual A and left it on the kitchen table. Another resident, individual B, took the medication. The claimant was told that if she had another medication error she could be terminated. The claimant was given additional training in medication administration.

The claimant had taken a 12-hour course in medication management when she was hired. She also had refresher courses.

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.

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.

871 IAC 24.32(8) provides:

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

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The definition of misconduct excludes acts of negligence in isolated situations. Wanton carelessness in the performance of one's duties is misconduct. The employer has the burden of proof to show misconduct.

The evidence in this case established that the claimant failed to document that she had administered medication to an individual on October 3, 2011. Although the claimant testified that she does not know if she did give the medication, she did write a note on October 4, 2011, that she had given the individual his medication on October 3, 2011. She wrote another note that she gave the medication again on October 4, 2011. In other words, the claimant backdated a record to show that she gave medication on October 3, 2011. This backdating in and of itself is troubling. If the claimant did not give the medication, she falsified the record. If she gave the medication, she failed to record it in a timely manner and as a result, the individual received too much medication.

The claimant knew that medication errors were serious. She had been suspended following an incident on August 24, 2011, where she left medication in a place where another resident could take it. The employer gave the claimant counseling and additional training. The employer also told the claimant that she could be terminated if she had another medication error. There were also medication errors in 2009.

The administrative law judge concludes that the claimant's conduct rises to wanton carelessness and is misconduct. The claimant knew that medication must be given as prescribed and documented carefully. The final error is all the more serious because of the backdating of the record. The employer has established misconduct. Benefits are denied.

DECISION:

The decision of the representative dated October 26, 2011, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs