

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JENNIFER M JARVIS
Claimant

FORT MADISON COMMUNITY HOSPITAL
Employer

APPEAL 15A-UI-11685-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/20/15
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 14, 2015, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on November 10, 2015. The claimant participated personally with her attorney, Kevin Kuckelman. The employer participated through Amanda Burgess, Director of Emergency Services. Vicki Kokjohn and Shelby Burchett also participated on behalf of the employer. No documents were offered or admitted into evidence.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a registered nurse (RN) and was separated from employment on September 18, 2015, when she was discharged.

The claimant as a registered nurse was responsible for the administration of medication to patients, as well as disposal of any unused medication. As part of the employer's policies and procedures, extensive measures are taken to ensure medication is properly administered, accounted for, and destroyed. The employer has specific procedures in place with regard to the retrieval of medication, through the administration to the patient, and destroying any unused medication, which include a nurse having to bar scan medications, cross-checking it with the patient's identification bracelet, and having a witness present in the disposal of certain classes of drugs, including narcotics. The claimant spent her entire nursing career with the employer, and had been trained at the time of hire, as well as throughout employment on the proper procedures. The claimant demonstrated throughout her employment an ability to follow the established protocol.

The employer routinely audited narcotics records and employees' actions, and in August 2015, discovered that the claimant had an abnormal amount of "waste", in terms of medications retrieved but not actually administered. The employer was able to verify the claimant had a

proper witness with the handling of wasted medication, and did not seek disciplinary action. However, a follow up audit in the weeks following, reflected the claimant again had three pages of “waste” compared to the other employees who had only one or one and a half pages. When investigated, the employer reported over 100 different records that the claimant had not followed the proper protocol with regard to administration and waste disposal. The medications in question were primarily for pain relief and narcotics, including morphine.

Based on the investigation conducted, the employer determined multiple instances where the claimant had removed the medication from storage without an order, and then did not administer the medication or dispose of it as unused. There were several instances identified of unrecovered medication that had been ordered, and retrieved, but then not administered to the patients. There were also repeated instances where the claimant did not have a witness for medication that was intended for waste. The handling of narcotics medications in particular required a witness to ensure proper protocol was followed. Once a medication was placed in the locked “waste” receptacle, the employer was unable to physically inspect the unused vials to confirm what medications had been placed in the container. During the period of the audit, the employer reported also changes to the claimant’s behaviors, and received multiple complaints from her co-workers that the claimant was taking long breaks, was missing during her shifts, and appeared to be fatigued and sweating excessively.

When confronted by the employer, the claimant did not offer an explanation for the audit results, or why her waste numbers had multiplied over a short period of time. The claimant was unable to offer the employer any plausible explanation or account for the removal of the drugs that could not be accounted for. She did state she had spoken to two pharmacists about matters, but when interviewed, the pharmacists denied the claimant’s assertions. The claimant was subsequently discharged for “drug diversion” based on her inability to account for the audit results.

Prior to the claimant’s separation, she had been issued a performance evaluation for various matters including attendance, her attitude, and breaks. The claimant was required to complete an action plan, and the follow up evaluation conducted in March 2015 reflected the claimant met expectations.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job-related 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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an

unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

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, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant demonstrated an ability to follow the established protocol and procedures with regard to medication administration, and waste procedures in the past. The employer elected not to confront the claimant in August 2015, after an audit exposed higher than usual numbers of waste, because the employer was able to find supporting evidence to support the claimant's actions. In September, 2015, however, the claimant's list of "waste" medication was two to three times the amount of her peers, and when further investigated, over 100 discrepancies were found where the claimant's administration and disposal of waste medication did not comply with the established practices. Based on the evidence presented at the hearing, and when compared to claimant's recollection of the event, the administrative law judge finds the employer's evidence as more credible.

The claimant was not discharged for theft or alleged theft, but rather, the claimant could not account for the audit, or her actions that reflected failure to follow established protocol. As a result, it led to nearly three times the level improperly handled medications in the context of "waste" and drug diversion. At issue were not a couple medication errors, or lapses, but over 100 in a short period of time. The employer credibly testified that the claimant over the month repeatedly removed drugs from storage, but did not administer or properly dispose of them, and could not offer a reasonable explanation for her actions. No persuasive explanation was provided by the claimant at the hearing. It cannot be ignored that during the same time the audit was conducted, the employer also received multiple reports of the claimant missing during her shifts, taking long breaks and acting differently.

Based on the evidence presented, the claimant failed to follow the established waste protocol, and knew or should have known her conduct was in disregard of the employer's interests and reasonable standards of behavior that the employer has a right to expect of its employees. The claimant's actions constituted misconduct even without prior warning for similar conduct. Benefits are withheld.

DECISION:

The October 14, 2015 (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.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/css