

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MELISSA A LARSON-WACHA**  
Claimant

**ABCM CORPORATION**  
Employer

**APPEAL 16A-UI-04824-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/03/16**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the April 21, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on May 10, 2016. The claimant, Melissa A. Larson-Wacha, participated. The employer, ABCM Corporation, participated through Melissa Mann, director of nursing; Jill Nelson and Kathie Muhlenbruch both observed the hearing. Employer's Exhibits A through F were received and admitted into the record without objection.

**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: Claimant was employed part time as a licensed practical nurse, or LPN, from March 4, 2009, until this employment ended on April 6, 2016, when she was discharged.

On or about March 1, 2016, claimant was dealing with a patient with dementia. This patient needed pain reliever, but she had a history of spitting out pills, so claimant gave the patient a Tylenol suppository. Claimant assumed the patient had a standing order for a Tylenol suppository, because during claimant's years of doing intake, it was customary for all patients to receive this order upon admission. The employer discovered claimant had given the Tylenol suppository during a state audit sometime in March.

On March 29, Mann called claimant about this incident, as it appeared to be a violation of the patient's dignity. Claimant explained why she had administered the suppository. Mann then told claimant to "fix it." Claimant believed that Mann wanted her to fix both her note about administering the medication and the patient's medication order. Claimant went into the computer system on April 3 and made both of these changes. When the employer discovered claimant had done this, claimant was discharged.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation.

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

The conduct for which claimant was discharged was merely an isolated incident of poor judgment. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of

knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Here, claimant reasonably interpreted Mann's instruction to "fix it" as an instruction to fix the standing order as well as her note about giving the Tylenol suppository. Claimant believed the patient had such a standing order when she administered the medication. Though claimant's failure to verify this on the patient's chart was negligent, it does not amount to disqualifying misconduct. As the employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

**DECISION:**

The April 21, 2016, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Elizabeth Johnson  
Administrative Law Judge

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Decision Dated and Mailed

lj/pjs