

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

KATHLYN M SMITH

Claimant

and

DSM HEALTHCARE MANAGEMENT

Employer

HEARING NUMBER: 17BUI-05733

**EMPLOYMENT APPEAL BOARD
DECISION**

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-A, 96.3-7

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE DENIED

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. With the following modification, the administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED** with the following **MODIFICATION**:

We have quoted the rule on misconduct, and this rule provides that repeated negligence can be disqualifying. We conclude here that the Employer has proven a pattern of carelessness by the Claimant of such a degree of recurrence as to constitute misconduct under rule 24.32(1)(a). Specifically, we conclude that the employer has proven a pattern of carelessness by the Claimant that is of "equal culpability" to a "deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees." "Culpability" is defined by Black's Law Dictionary to mean "blameworthiness." *See also Webster's Third International Dictionary, Unabridged*, (1961)(giving "blameworthiness" for definition of culpability). Black's goes on to provide that even in criminal cases "culpability requires a showing that the

person acted purposely, knowingly, *recklessly*, or *negligently* with respect to each material element..." The word "culpable" is defined in Black's to mean "1. Guilty; *blameworthy* 2. *Involving the breach of a duty*." Webster's massive unabridged dictionary notes that the stronger sense of "culpable" meaning "criminal" is in fact "obsolete." Instead for modern definitions of "culpable" the 3rd unabridged gives "meriting condemnation or censure esp. as criminal <~ plotters> <~ homicides> or as *conducive to accident*, loss, or disaster <~ *negligence*>." *Webster's Third International Dictionary, Unabridged*, (1961)(emphasis added). Applying the standards of rule 24.32(1)(a) governing **repeated** carelessness we find that the claimant's pattern of carelessness proven on this record demonstrates negligence of such a **degree of recurrence** as to constitute culpable negligence that is as equally culpable as intentional misconduct.

We emphasize that the legal standard for misconduct is not changed by the fact that the Claimant works in the health care field. The fact that nursing is very important, and highly detailed does indeed factor into our analysis. These requirements set the standard of care. Thus while writing down what you are doing as you are doing it might not be a violation of due care for a fast food manager, it would be a violation of care for a nurse administering medications. Beyond that, however, the law remains the same. Mere incapacity, and mere negligence, are not disqualifying even in the health care field. For example, the cases discussing these principles include commercial drivers who have to be specially licensed and whose job performance can endanger lives. *E.g. Lee v. Employment Appeal Board*, 616 NW2d 661 (Iowa 2000). The cases even include one with an error in nursing care. *Infante v. Iowa Dept. of Job Service*, 364 N.W.2d 262, 265 (Iowa App. 1984). The definition of misconduct does not change from case to case. Rather the application of that definition changes. So the "standards of behavior which the employer has the right to expect of employees" certainly does take into account that we are in the health care field. But whether a worker has shown a "willful or wanton disregard" for those standards is the same no matter what the job is. See *Navickas v. Unemployment Comp. Review Bd.*, 787 A. 2d 284 (Pa. 2001); *Messer & Stilp v. Dept. Of Employment Sec.*, 910 NE 2d 1223 (Ill. App. 2009); *Kakkanatt v. Oklahoma Employment Sec. Com'n*, 183 P. 3d 1032 (Okla App. 2008). Here we conclude that the Employer has shown "conduct evincing such willful or wanton disregard of an employer's interest as is found ...in the carelessness or negligence of such degree of recurrence as to manifest equal culpability [to deliberate violation or disregard]" and therefore affirm the Administrative Law Judge. 871 IAC 24.32(1)(a).

Kim D. Schmett

Ashley R. Koopmans
