

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JESSICA BLOMBERG
Claimant

BETHANY MANOR INC
Employer

APPEAL 21A-UI-19318-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/20/21
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Jessica Blomberg, filed an appeal from the August 18, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the conclusion he was discharged for violation of a known rule. The parties were properly notified of the hearing. A telephone hearing was held on October 19, 2021. The claimant participated. The employer participated through Amanda Lankford. Exhibit A was received into the record.

ISSUE:

Whether the claimant's separation from the employer is disqualifying?

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 personal companion from January 23, 2009, until this employment ended on June 4, 2021, when she was discharged. The claimant reported directly to Licensed Nurse Practitioner Manager Char Harris.

The employer has a rule requiring an employee to count narcotics before ending their shift with the employee coming on to their shift. Each employee then signs off that the narcotic count matches. This policy is located in the employer's policy and procedural manual, in order to comply with state law. The claimant was aware of this policy because it was in the procedural manual.

On March 4, 2021, the employer discovered the claimant had not conducted the narcotics count prior to leaving for the day.

On March 7, 2021, the employer discovered the claimant had not conducted the narcotics count prior to leaving for the day.

On March 8, 2021, the claimant received a written warning regarding her failure to conduct the narcotics count on March 7, 2021.

On March 9, 2021, the claimant received a three-day unpaid suspension regarding her failure to conduct the narcotics count on March 4, 2021.

In the first few days in June 2021, the claimant noticed that her stomach was hurting and was bloated. The claimant was involuntarily shaking.

On June 4, 2021, the claimant arrived at work as scheduled for her shift spanning from 6:00 a.m. to 2:30 p.m. At around 2:00 p.m., the claimant asked Ms. Harris, who was covering someone who was unexpectedly absent, if she could do the narcotics count. The claimant worked until 2:20 p.m. to 2:27 p.m. The claimant brought the narcotics down to the nurse's station for the count at that time. Ms. Harris was not at the nurse's station. The claimant decided to leave the employer's premises without conducting the narcotics count.

On June 4, 2021, Human Resources Manager Nathan Winkel, Assisted Living Program Manager Cindy Martin, and Ms. Harris attempted to call the claimant. After not being able to contact the claimant, they decided to terminate her employment because she failed to do the narcotic count.

On June 4, 2021, the claimant went to the Emergency Room. It was discovered that her symptoms were caused by hemoperitoneum, anemia, and lacerations to her spleen and liver. Hemoperitoneum is internal bleeding that pools in the abdominal cavity. The claimant was shaking when she arrived at the hospital. The claimant provided documents related to her medical treatment dated from June 4, 2021 to June 11, 2021. (Exhibit A)

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.

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

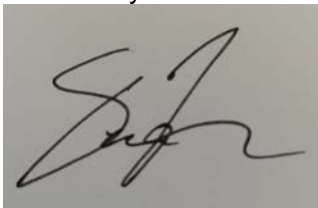
disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree 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 claimant and employer agree that the claimant had previously warned about failing to conduct narcotic counts prior to leaving. It is uncontroverted that the last warning the claimant received was a three-day suspension, which put the claimant on notice that if additional infractions occurred she would be terminated. The claimant contends that she experienced a medical emergency on June 4, 2021 that superseded her responsibility to conduct the count on that day. The administrative law judge disagrees that the claimant's behavior on June 4, 2021 is excused by the medical emergency. The claimant did not let the employer know why she was leaving prior to the end of her shift. The claimant simply left. The claimant should have informed Ms. Harris or someone else in management about her circumstances prior to leaving and disregarding the requirement to conduct the narcotic counts. Benefits are denied.

DECISION:

The August 18, 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.



Sean M. Nelson
Administrative Law Judge
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November 8, 2021
Decision Dated and Mailed

smn/scn