

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MAREN M GILBERT
Claimant

APPEAL NO. 09A-UI-07493-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE VILLAGE AT LEGACY POINTE
Employer

OC: 04/19/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated May 14, 2009, reference 01, that held she was discharged for conduct not in the best interests of her employer on April 14, 2009, and benefits are denied.

A telephone hearing was scheduled and held on June 9, 2009. The claimant participated. The employer did not participate.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness, and having considered all of the evidence in the record, finds: The claimant worked as a full-time medication aide for her employer from May 5, 2008 to April 14, 2009. The claimant was discharged from employment on April 14, 2009 due to missing narcotic medication. Although the claimant had signed for receipt of the medication, she denied being responsible for it at the time of discharge.

Although a notice of hearing was mailed to the employer, they failed to respond to it and participate in this hearing.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that the employer has failed to establish the claimant was discharged for misconduct in connection with employment on April 14, 2009.

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.

The claimant denied in this hearing that she was responsible for the missing narcotic medication and the employer failed to offer documentation and/or testimony to refute it. Misconduct is not established in this case.

DECISION:

The decision of the department representative dated May 14, 2009, reference 01, is reversed. The employer failed to establish the claimant was discharged for misconduct in connection with employment on April 14, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

R. L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs