

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORI FISHER

Claimant

APPEAL NO. 13A-UI-10156-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA

Employer

OC: 08/11/13

Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

The University of Iowa (employer) appealed an unemployment insurance decision dated August 30, 2013, reference 01, which held that Lori Fisher (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 2, 2013. The claimant participated in the hearing. The employer participated through Mary Eggenburg, Benefits Specialist; Trisha Smith, Assistant Director of Pharmacy; and Mary Kundert, Pharmacy Supervisor/Human Resources Representative.

ISSUE:

The issue is whether the claimant was discharged for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on March 15, 1982 and worked as a full-time Health Care Services Supply Assistant Manager from July 1992 through August 12, 2013 when she was discharged for dispensing a medication without an order or prescription. She is a registered technician licensed by the Iowa Board of Pharmacy and her job involved supervision of pharmacy technician operations. The claimant works in a hospital facility and on approximately August 2, 2013, a pharmacy technician went into medical distress with acute breathing problems. Instead of calling a Code Blue, which is equivalent to calling 911 outside of the hospital, the claimant retrieved an Albuterol inhaler from stock supplies and had the pharmacist on duty check the prescription before she administered it to the technician. The claimant did not inform the pharmacist that she did not know whether the technician had ever taken Albuterol and that there was no prescription or doctor's order to dispense the inhaler. The technician eventually sought medical treatment.

The claimant filed a claim for unemployment insurance benefits effective August 11, 2013 but has not received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged for dispensing a medication without a prescription/order and practicing medicine without a license. She denies knowing that she did anything wrong but that claim is without merit. The claimant's actions could have had grave consequences and resulted in serious injury or death to the technician. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated August 30, 2013, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. There is no overpayment as a result of this decision.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css