

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LORRIE A MATHEWS
Claimant

ABCM CORPORATION
Employer

APPEAL 14A-UI-02520-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/12/14
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 25, 2014, (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on March 28, 2014. Claimant participated with the former assistant DON. Employer participated through human resources coordinator Linda Grindle. Mindy Daugherty did not participate.

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 full-time as a RN and was separated from employment on December 27, 2013. On that date the corporate quality assurance nurse Mindy Daugherty accused her of making medication errors by giving resident RE his 6 a.m. medications at 7:30 a.m. Hyde told her RE regularly declines his medications if administered separately or at any other time than 7:30 a.m. because of his OCD routine and every nurse follows that schedule with him because he would cause problems for residents if his routine were disrupted. When Daugherty told Hyde that a dose of Alprozalol, a class three controlled substance, was found on the medication cart assigned to claimant, Daugherty had not asked claimant to explain what she knew, if anything, about the situation. At 7:30 a.m., claimant cleaned the cart, including the top surface and locked it. The pill was found on top of the cart at 8:30 a.m. but it was not shown to her until 2:30 p.m. when it looked like it had been spit out and the writing on the pill was not legible. Hyde asked Daugherty if the medication might have been administered, spit out on the floor, and found by a housekeeper who put it on the cart. Daugherty did not believe so but did not investigate further and instructed Hyde to terminate claimant's employment.

REASONING AND CONCLUSIONS OF LAW:

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

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 employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

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. The conduct for which claimant was discharged was because she followed established internal informal procedure to give RE medications as other nurses do to avoid difficulty with his OCD routine. Even though claimant gave RE his medications all at once rather than spaced out at separate times, since the consequence was more severe than other employees received for the same conduct, the disparate application of the policy cannot support a disqualification from benefits. As to the pill found on top of claimant's medication cart after she had cleaned and locked it, the employer has not established that claimant bore any connection to or responsibility for that pill. Accordingly, the employer has not established a current or final act of misconduct, and, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed.

DECISION:

The February 25, 2014, (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed. The benefits withheld shall be paid, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs