

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARTIN E SCHILDGEN
Claimant

APPEAL NO. 12A-UI-10682-SWT

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

COMMUNITY CARE INC
Employer

**OC: 08/12/12
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 17A.3(1)e – Decisions Shall be Available for Public Inspection
Iowa Admin. Code r. 871-26.17(3) – Decisions Shall be Kept on File for Public Inspection

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated August 30, 2012 (reference 01) that concluded he was discharged for work-connected misconduct. A telephone hearing was held on September 28, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Ally Cinadr participated in the hearing on behalf of the employer, with a witness Sid Bolton.

The presiding officer, Administrative Law Judge Steven A. Wise, issued a written decision on October 12, 2012. On or about that date, as required by law, this written decision was mailed to the parties and was made available for public inspection via the Agency website and was kept on file for public inspection. This amended decision is issued on or about February 12, 2016; following a request from the claimant/appellant to remove a portion of the findings of fact in accordance with Iowa Code §17A.3(1)(e), based on his claim that the information is an unwarranted invasion of personal privacy. This amended decision removes the last paragraph of the Findings of Fact, per the claimant/appellant's request. In all other respects, the decision issued on October 12, 2012 remains as is and remains available for public inspection on the Agency website.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked part time for the employer as a direct support professional from September 10, 2008 to August 3, 2012. His job duties involved caring for disabled individuals in a residential setting, including administering medications. The employer suspended him on August 3 and discharged him on August 13, 2012 because the employer determined he had neglected to administer the correct medication to a resident on July 25, 2012.

The claimant received a verbal discussion from his supervisor on February 12, 2012 for inaccurate medication documentation. He received a written warning on March 29, 2012 for inaccurate medication documentation on March 18. He received a verbal discussion on

March 29, 2012 because on March 18, the claimant gave a resident a medication that was supposed to be withheld. This was a regular medication for the resident and was in the medication binder to be administered but the claimant was not told and was unaware that the medication was not to be given at that time.

The claimant worked the PM shift on July 25, 2012. At the beginning of his shift, the direct support professional who worked the AM shift informed the claimant that she had mistakenly given a resident medication intended to be given on a different shift. When it was time to give that resident his PM medication, the claimant checked the medication binder to make sure the correct medication and dosage was being given.

On July 26, direct support professional working the AM shift reported the claimant had given the resident the medication for the wrong shift. When the claimant was questioned about this on August 3, 2012, he denied giving the resident the wrong medication. The claimant was then suspended. The employer concluded the claimant was the person who made the medication error and discharged him on August 13, 2012.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified credibly that he had given the proper medication to the resident on July 25. The employer has not presented sufficient evidence to rebut this. It is also consistent what he said when questioned on August 3. Consequently, no willful and substantial misconduct has been proven in this case. I also cannot conclude, based on the evidence committed, that repeated negligence rising to the level of willful misconduct, which would involve a reckless disregard of the employer's interests has been proven.

AMENDED DECISION:

The unemployment insurance decision dated August 30, 2012 (reference 01) is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Emily Gould Chafa,
on behalf of
Steven A. Wise
Administrative Law Judge

Amended Decision Dated and Mailed

ec/saw/can