

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALANDRIA N DAVISON
Claimant

GARNDVIEW HEIGHTS INC
Employer

APPEAL 15A-UI-12289-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/11/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Alandria Davison (claimant) filed an appeal from the October 30, 2015 (reference 01) unemployment insurance decision that denied benefits based upon the determination Grandview Heights, Inc. (employer) discharged him for unsatisfactory work when he was capable of performing satisfactory work. The parties were properly notified about the hearing. A telephone hearing was held on November 23, 2015. The claimant participated on her own behalf. The employer participated through Director of Nursing Jordan Emley and Quality Assurance Nurse Tammy Veldhouse.

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: The claimant was employed part time as a Licensed Practical Nurse (LPN) and Charge Nurse in the dementia unit beginning on August 11, 2015 and was separated from employment on October 13, 2015; when she was discharged. The claimant has been an LPN since January 1989. Part of her job with the employer required her to pass medications to the residents. The pharmacy would fill a doctor's order and send up a medication card that included all of the patient's medications; which would be kept on the medication cart. The claimant was then responsible for verifying the medication, dose, time of day, and method of delivery in the Medication Administration Record (MAR) before giving it to the resident. After giving the resident the medication, she was to record that she gave the resident his or her correct medication and at what time in his or her medical chart.

Initially, the claimant was meeting the employer's expectations. However, approximately one month into her employment, she began making medication errors. From September 7, 2015 through October 8, 2015, the claimant made six medication errors. Her errors included recording in a residents' charts that she had given medication when she had not and giving a resident a double dose of medication without verifying the correct amount in the MAR. Each time, Director of Nursing Jordan Emley or Quality Assurance Nurse Tammy Veldhouse

would present the claimant with the medication error report, have her sign it, and discuss ways to correct the behavior. They would also review the standard operating procedures of verifying the medication in the MAR and not recording the medication had been given before it had been given.

On the evening of October 12, 2015, the claimant gave a resident a double dose of medication when she failed to verify the medication dose in the MAR. Veldhouse was passing medications the following morning and found the error. She presented the medication error report to Emley. Emley met with the claimant and discussed her ongoing concerns regarding the avoidable medication errors as the claimant was not following the standard operating procedures. Emley decided at that time the claimant posed a safety risk to the residents and terminated the claimant's employment.

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. Benefits are denied.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

The claimant does not dispute that the medication errors occurred. She provides numerous explanations as to why they occurred including an ongoing stressful situation with a co-worker and what she perceived to be as inadequate training on the employer's computer system. However, that does not alleviate her duty to provide residents with the appropriate medications and properly record those medications. She acknowledged during her testimony that she did not always follow the employer's standard operating procedures which were put in place to prevent medication errors.

Workers in the medical or dependent care profession, reasonably have a higher standard of care required in the performance of their job duties. That duty is evident by special licensing requirements. The claimant's repeated failure to accurately perform her job duties after having been warned is evidence of negligence or carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. Accordingly, benefits are denied.

DECISION:

The October 30, 2015 (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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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