

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALSION L KIPP**  
Claimant

**APPEAL NO: 18A-UI-08847-TN**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JACKSON RECOVERY CENTERS INC**  
Employer

**OC: 08/20/17**

**Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

Jackson Recovery Centers, Inc. the employer, filed a timely appeal from a representative's unemployment insurance decision dated August 13, 2018, (reference 02) which held Alison Kipp eligible to receive unemployment insurance benefits, finding that the claimant was dismissed from work on July 26, 2018 but the record did not show willful or deliberate misconduct. After due notice was provided, an in-person hearing was held in Sioux City, Iowa on September 13, 2018. Employer participated by Ms. Barbara Jaminet, North Supervisor and Ms. Kim Jorgensen, Human Resource Generalist. Employer's Exhibits A through N were admitted into the hearing record. Claimant participated by telephone.

**ISSUE:**

The issue is whether the evidence in the record establishes willful job-related misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Alison Kipp was employed by Jackson Recovery Centers, Inc. from February 9, 2018 until July 26, 2018, when she was discharged from employment. Ms. Kipp was employed as a full-time RN/On-Call Nurse and was paid by the hour. Her immediate supervisor was Barbara Jaminet, her supervisor.

Alison Kipp was discharged on July 26, 2018 when the employer believed that she had violated Recovery Centers policies by practicing beyond the scope of her authority during an incident that had occurred earlier that day.

On July 26, 2018, the claimant was the on-call RN. Ms. Kipp received a telephone call from a recovery counselor at one of the employer's facilities requesting guidance with a patient's medication. The counselor informed Ms. Kipp that the medication was not listed on the facilities medication tracking system and her belief that it had been ordered by a physician that was not employed by the Recovery Centers. The caller further stated that the order for the drug was not on the facilities "MAR". It appears that the medication had been ordered by an outside

physician for the patient and had been delivered by the pharmacy in a bubble pack for dispensing. Based upon the conversation, Ms. Kipp, it appears, concluded that because the doctor had ordered the medication (a controlled substance) through a pharmacy, it must have been the doctor's intention for the patient to receive the medication, although the patient's records contained no doctor's order for the medication. Ms. Kipp authorized the counselor to administer the Tramadol (controlled substance). Ms. Kipp did not contact the doctor to verify whether the controlled substance should be given but instead gave verbal authorization to the counselor to administer the drug. During the investigation into the matter, Ms. Kipp acknowledged giving verbal authorization over the telephone to give the patient Tramadol although she was aware there were no doctors order's to do so.

It is the claimant's position that based upon the information that had been given to her during the telephone call, she believed that the intent of the outside physician was for the patient to be administered the drug and therefore authorized it. Ms. Kipp had also complained to the employer about another nurse that Ms. Kipp believed was spending an extraordinary amount of time watching her.

Before the final incident, Ms. Kipp had received written warnings for medication errors on July 24, 2018, and on May 24, 2018.

The employer considered the claimant's most recent error was more serious than a medical error because the claimant had authorized administration of a controlled substance without a doctor's order or any information on the MAR's system that was necessary to establish that the controlled substance was authorized by the patient's doctor. She authorized the medication instead of merely calling the doctor to verify the physician's orders. The claimant did not have authority to authorize the administration of a controlled substance without the doctor's verbal approval and without sufficient documentation in the employer's systems to verify use of the drug.

#### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes work-related misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. It does.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 to prove the claimant was discharged for work-connected misconduct as defined by the Unemployment Insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (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. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

In the case at hand, the evidence in the record establishes that Ms. Kipp had received a number of warnings for medication errors. The claimant had been placed on notice that additional errors could result in termination from employment. The claimant was discharged after she gave verbal authorization to a counselor to administer a controlled substance for a patient although the order for the controlled substance was not on the organization's medication tracking system and there was no order by the outside doctor to confirm that the medication had been delivered by the pharmacy to the employer's facilities should be administered by staff to the patient. Based upon the lack of documentation to verify that the controlled substance had in fact been ordered by an authorized outside physician, the claimant should not have authorized the counselor to administer the substance without ensuring that the required documentation had been received. Ms. Kipp chose to authorize the medication instead of taking the step of contacting the outside physician by telephone. Based upon the policies and practices of the employer as well as the applicable statutory nursing standards, Ms. Kipp knew or should have known that the authority to authorize the use of a controlled substance under the circumstances. A previous warning showed up on the claimant in this case weighed heavily towards the finding of disqualifying misconduct. The claimant had been placed on notice that she not following the employer's expectations in administration of medications and further issues could result in her termination from employment. Under those circumstances, the claimant should have been especially mindful that she was following the employer's expectations and the statutory guidelines. The employer has sustained its burden of proof in establishing that the claimant was discharged for work-connected misconduct, unemployment insurance benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Because the claimant's separation was disqualifying, benefits were paid to which she was not entitled. The administrative record reflects the claimant has received unemployment insurance

benefits in the amount of \$1,401.00 is filing a claim with an effective date of August 20, 2017 for the benefits weeks ending September 1, 2018 through September 15, 2018. The administrative record also establishes that the employer did participate in the fact-finding interview.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3(7)a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

**DECISION:**

The representative's unemployment insurance decision dated August 13, 2018, reference 02, is reversed. Claimant was discharged for work-connected misconduct. Unemployment insurance benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible. Claimant has been overpaid unemployment insurance benefits in the amount of \$1,401.00 and is liable to repay this amount. The employer's account shall not be charged based upon the employer's participation in the fact-finding.

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Terry P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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