

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMANTHA J SCHARES
Claimant

APPEAL NO: 18A-UI-02474-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLACK HAWK COUNTY
Employer

**OC: 01/21/18
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

Samantha J. Schares, the claimant, filed a timely appeal from a decision of a representative dated February 14, 2018, (reference 01) which denied unemployment insurance benefits finding that the claimant was discharged from work on January 29, 2018, for failure to follow instructions in the performance of her job. After due notice was provided, a telephone hearing was scheduled for and held on March 22, 2018. Claimant participated. Employer participated by Ms. Debby Bunger, Human Resource Director. Employer's Exhibits 1 through 22 were admitted into the hearing record.

ISSUE:

Whether the claimant was discharged for work connected misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds: Samantha J. Schares was employed by Black Hawk County from February 22, 2017 until January 29, 2018, when she was discharged from employment. Ms. Schares was employed as a public health nurse, assigned to work in the Waterloo, Iowa schools and was paid by the hour. Ms. Schares was employed eighty five percent of full-time. Claimant's last immediate supervisor was Angie Beenken, Department Supervisor.

On January 18, 2018, Ms. Schares was placed on investigative leave while the employer investigated a discrepancy in the tallying of the number of pills that remained in a student's prescription. Because there had been an allegation that some of the pills were missing or unaccounted for, the claimant was suspended pending the outcome of the investigation.

On January 19, 2018, when the claimant began the investigatory suspension, the employer intended that the claimant not only not report for work, but also not visit any of the employer's facilities while the investigation was ongoing. The employer had disabled an electronic key in the claimant's possession to prevent her from entering any school buildings; however the employer had not informed Ms. Schares this was for prohibiting her from entering buildings

while suspended. The employer was not aware the claimant also possessed a “key” to gain access to a school building.

On January 15, 2018, before the suspension, Ms. Schares discovered a written prescription in the in-box for one of the students under her care at a Waterloo, Iowa school. The prescription had been dropped off by a person who had acted as a liaison between the student’s family and the school district, but no longer had further contact with the family because of other issues. Ms. Schares took the prescription to the pharmacy that she used, and obtained the filled prescription from the pharmacy the same day, and placed it in her backpack. The claimant did not return the prescription to the school dispensary, for the students use, but left it in her backpack. Later in the week, the issue of the missing prescription medications came up and she was suspended on Friday, January 19, 2018, pending the outcome of the investigation.

During the afternoon of Sunday, January 21, 2018, Ms. Schares went to the school and placed a vial of containing medication unlocked in the nurses are of the school and then left the premises. The school district became aware that the claimant had visited the school because security alarms had been set off when the claimant had accessed the building. The employer investigated the claimant’s entry and the vial of pills she had left, found a discrepancy in the prescription. Ms. Schares had specifically identified that the vial contained the correct number of pills. She further identified that they were in two separate portions of the vials, separated by cotton and the two portions were of two different shades of green, but were the correct prescription. Ms. Schares further stated that they had been dispensed by the pharmacy in that manner. The employer then further investigated. Based upon statements made by the pharmacy and the results from a police investigation, the employer determined that the vial contained four different medications, and that one of the medications included was not of a type that had been prescribed or used by any students at any of the school locations where Ms. Schares performed her work for Black Hawk County. On January 29, 2018, the claimant was informed that she was being terminated from her employment. Although the claimant had been vindicated in the investigation that had prompted her investigatory suspension, the claimant’s actions during her suspension had resulted in her termination from employment.

The employer concluded that the claimant had violated a 2015 change in medicine handling procedures by taking possession of the prescription herself instead of having the prescription delivered by the pharmacy or a family member, that the claimant had entered a school facility without authorization while on investigatory suspension, and thirdly that the contents of the prescription vial had been changed while in her possession, because the vial did not contain the same pharmaceutical that had been placed in the vial by the pharmacy when it was provided to the claimant.

It was the employer who believed that Ms. Schares was aware of the update in the medication administration rules that prohibited nurses or assistants filling prescriptions for students and required family members, guardians and pharmacies in the alternative, to perform these activities. The changes in the rules were available to employees online and that the claimant had assisted in the certification of a number of assistants on program updates. It is the employer’s further position that while the prescription was in the claimant’s possession for six days, the contents had been altered, and the timing of the claimant’s return of the prescription to the school had prevented the contents from being counted and also verified by another employee as required by policy.

Ms. Schares denies any knowledge of a change in the policies regarding transporting student prescription medications. The claimant denies being informed or being aware that she was prohibited from entering school property while on investigatory suspension. She asserts that

although she had noted that the contents of the prescription bottle contained tablets in two sections, separated by cotton and that the contents contained two different shades of green, she was not able to count or further verify the contents because there was no other employee to assist in the verification when she brought the pills back on Sunday.

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 law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. The claimant remains disqualified until such time as the claimant requalifies for benefits by working earning insured wages ten times their weekly benefit amount.

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 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). _____ disqualifies misconduct to substantial and wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In the case at hand, the evidence establishes that the claimant was discharged after she had taken a student's prescription, had it filled at a pharmacy, took possession of the filled prescription, and kept it for six days before returning it to the school at a time when no one else was present. The employer investigated and reasonably determined that the contents of the prescription vial that was returned by Ms. Schares had been altered while it was in her possession. The contents of the prescription vial were not the same pharmaceuticals that had been placed in the vial by the pharmacy. The employer was reasonable in concluding that the claimant had either altered the contents of the prescription vial or failed to maintain the required security while the prescription was in her possession. It further appeared that the manner in which the claimant returned the vial and the timing of it may have been intentional on the part of the claimant to avoid the contents being counted and examined by a second employee as required by policy. The administrative law judge concludes that the employer by a preponderance of the evidence has met its burden of proof in establishing work connected misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. Benefits are denied.

DECISION:

The representative's decision dated February 14, 2018, reference 01 is affirmed. 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.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn