

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURA JORDAN
Claimant

APPEAL NO: 12A-UI-03785-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABCM CORPORATION
Employer

OC: 02-26-12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 30, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 26 and continued on April 27, 2012. The claimant participated in the hearing. Alyssa Gillespie, business office manager, and Janet Tuttle, corporate quality assurance nurse/former DON, participated in the hearing on behalf of the employer. Employer's Exhibits One through Six were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time RN charge nurse for ABCM Corporation from December 23, 2009 to February 3, 2012. She was discharged for receiving three written warnings for failure to perform her job duties to professional standards within a 30-day time frame. The claimant received a written warning January 17, 2012, because the employer could not account for one Lortab pill for a resident and the claimant told acting DON Janet Tuttle she "doesn't always pay attention to the count on the Lortabs, just punches the next pill" (Employer's Exhibit Two). Consequently, the employer was not able to account for one Lortab for a resident (Employer's Exhibit Two). Additionally, the staff reported to the employer that when they worked the day after the claimant worked, they found pills left in the blister pack that should have been given to residents or the punches missing for "the day they are administering" (Employer's Exhibit Two). Other employees stated the claimant admitted she did not "always double check the punches" and "may have doubled up on a Lortab dosage when the Lortab count was off in November" (Employer's Exhibit Two). On January 16, 2012, Ms. Tuttle "observed on an MAR that a Vitamin B 12 injection had not been administered on January 14, 2012, as ordered by the physician" (Employer's Exhibit Two). The claimant indicated she got the injection out but was interrupted and forgot to do it and also failed to do it when she worked next January 15, 2012 (Employer's Exhibit Two). On January 31, 2012, the claimant received a second written warning for failing to follow a doctor's orders (Employer's Exhibit Three). A

resident was released from the hospital with an order dated January 24, 2012, to “increase Coumadin to 10 mg today and recheck INR tomorrow (1.26.2012)” (Employer’s Exhibit Three). The order was noted on the desk calendar, the resident’s MAR, and the nurses’ notes but was not carried out, placing “the resident at risk for further medical complications” (Employer’s Exhibit Three). On January 25, 2012, another resident was to receive a treatment and that “was also missed putting the resident at risk for further medical complications” (Employer’s Exhibit Three). The warning stated that was her second violation and that three written warnings in one year would result in termination of the claimant’s employment (Employer’s Exhibit Three). Around 4:00 p.m. February 1, 2012, a resident’s blood sugar level was discovered to be higher than normal and the “afternoon nurse informed the acting DON of the higher blood sugar and the acting DON instructed a nurse to contact (the claimant) to see if (the claimant) had given the 11:45 insulin, since it was not signed out on the MAR. Prior to calling (the claimant), the nurse opened the medication cart and found an insulin syringe with 10 units of insulin drawn up, indicating that the 11:45 a.m. dose had not been administered” (Employer’s Exhibit Four). Additionally, on February 2, 2012, “the MAR shows an initial for the February 1, 2012, 11:45 dose of Novolog that was blank on the pm of February 1, 2012” (Employer’s Exhibit Four). That resident was the only one who received 10 units of insulin. “Failure to follow the physician order for administering the insulin put the resident at risk for medical complications related to diabetes” (Employer’s Exhibit Four). Because that was the claimant’s third written warning for the same type of violation within one year, her employment was terminated February 3, 2012 (Employer’s Exhibit Four).

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.

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 claimant's errors were serious, of the same nature, and all occurred within less than 30 days. Despite receiving warnings about her actions, the errors persisted. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits must be denied.

DECISION:

The March 30, 2012, reference 01, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw