

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURA A HAACK
Claimant

APPEAL NO: 06A-UI-08137-D

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 07/17/06 R: 03
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Care Initiatives (employer) appealed a representative's August 8, 2006 decision (reference 01) that concluded Laura A. Haack (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on November 14, 2006. The claimant participated in the hearing, was represented by Renee Sneitzer, attorney at law, and presented testimony from four other witnesses, Dawn Francis, Brian Wilcox, Malysse Sparks, and Kim Pecenka. David Williams of TALX Employer Services appeared on the employer's behalf and presented testimony from two witnesses, Dorie Brennecke and Maria Rieck. During the hearing, Employer's Exhibit One and Claimant's Exhibit A were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on February 2, 1991. Since 2000, she worked full time as an LPN/charge nurse in the employer's Belle Plaine, Iowa skilled nursing facility. Her last day of work was July 12, 2006. The employer suspended her on July 14 and discharged her on July 17, 2006. The reason asserted for the discharge was a medication error discovered on July 12 that she failed to report to the administrator or director of nursing.

On June 28 a patient with multiple melanomas was discharged from an area veteran's hospital and admitted to the employer's facility. The hospital faxed the facility a copy of the claimant's active inpatient and active outpatient medications (Employer's Exhibit One, pages five through eight). The claimant was on duty when the list was transmitted to the facility. Included on both portions of the list were melphalan, also known as alkeran, a chemotherapy drug, and prochlorperzin, an anti-nausea drug that was to be taken in conjunction with the melphalan. The claimant drew up admission orders which included in the medication treatment the melphalan, but not the prochlorperzin, after she contacted the attending nurse at the hospital to

verify which medications were to be continued upon discharge from the hospital. Final information was not received from the resident's attending health care before the claimant went off duty. She prepared and passed on the information she had received, which included the continuation of melaphan but not the prochlorperzin, to her relief, Mr. Wilcox.

Mr. Wilcox initially was advised by the veteran's hospital that the care provider had given approval, so he forwarded the orders to the dispensing pharmacy. Employer's Exhibit One, page nine. In fact, the resident also had a treating oncologist, and in the records the claimant had also received from the hospital a progress note regarding the resident's outpatient medications indicating that continuation of "the chemotherapy regimen will be decided by hematology clinic." Employer's Exhibit One, page four. Yet on June 28, after the initial admission order was faxed to the dispensing pharmacy, the nurse from the veteran's hospital verbally advised Mr. Wilcox that the melaphan should not be continued; a physically signed admission order from the attending general care provider was not sent to the facility until July 5. Based upon the verbal correction from the hospital, Mr. Wilcox forwarded a copy of a corrected admission order without the melaphan to the pharmacy and called the pharmacy to tell them to disregard the first admission order; however, the pharmacy processed the initial admission order.

Because of the information that was originally obtained and passed on by the claimant that the melaphan was to be continued, medical administration record from the dispensing pharmacy showed that the chemotherapy drug was administered to the resident upon his June 28 admission to the facility. The medication administration records for June were reviewed by the director of nursing (DON). Apparently because of the conflicting admission orders, while the drug was briefly removed from the pharmacy order after review, no specific notation was made at that time that the drug should not have been administered, and administration and recording of the drug continued into July after another employee made an additional request to the pharmacy regarding providing the medication because of a belief the medication had been inadvertently overlooked by the pharmacy.

There were a number of staff meetings occurring on July 12 involving Ms. Brennecke, the administrator, and Ms. Sparks, the acting DON, and sometimes the claimant. The claimant concluded her involvement in the meetings shortly after 2:00 p.m. She was still the charge nurse on duty when she answered a call coming in from the resident's oncologist at 2:30 p.m., near the end of her shift. The resident had seen the oncologist that day, and the oncologist was concerned to learn that the resident had been continuing to receive the chemotherapy drug for an additional 14 days without an order from the oncologist. The claimant noted the call in the nursing notes with the comment that a medication order was received. Employer's Exhibit One, page 19. She was then relieved by Mr. Wilcox; as she left the facility sometime before 3:00 p.m., she reported the medication problem to him and to another staff person, but did not make a written or verbal report to either Ms. Brennecke or Ms. Sparks, as she believed they were still in meetings, believed she had adequately covered the situation for the day, and believed she could make a report when she came in the next day.

At approximately 5:20 p.m. the resident's wife came to the nurse's station and spoke with Mr. Wilcox; she was very upset about the unnecessary continuation of the chemotherapy medication, but he was able to calm her. At approximately 8:00 p.m., because of the contact with the resident's wife, Mr. Wilcox verbally reported the error to Ms. Brennecke. She began an investigation which then led to the claimant's discharge.

While the resident suffered some additional nausea as the anti-nausea accompaniment was not also administered, it did not appear that there was any ultimately negative effect on the resident. Employer's Exhibit One, page 48, Claimant's Exhibit A.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer’s interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer’s interest, or
 2. The employee’s duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is committing and failing to report a serious medication error. While various persons, including the claimant, made some errors that led to the initial and continued incorrect administration of the drug, and while ideally she should have made a more formal report after receiving the call from the oncologist, Under the circumstances of this case, the claimant’s mistakes in this situation were the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, or were the result of a good faith error in judgment or discretion. There is no evidence the claimant intentionally failed to carry out her duties. Huntoon, supra.

The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant’s actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative’s August 8, 2006 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs