

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MANDY C HORN**  
Claimant

**APPEAL NO. 12A-UI-02704-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GOOD SAMARITAN SOCIETY INC**  
Employer

**OC: 01/15/12**  
**Claimant: Respondent (1)**

Section 96.4-3 – Availability for Work  
Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Employer filed an appeal from a representative's decision dated March 8, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. In its letter of appeal the employer stated the claimant had been separated from employment. A telephone conference hearing was held on April 3, 2012. The claimant participated personally. Participating on behalf of the claimant was Mr. Patrick Phipps, Attorney at Law. Although duly notified, the employer did not respond to the notice of hearing and did not participate. Claimant's Exhibits One, Two and Three were received into evidence.

**ISSUE:**

The issue is whether the claimant is able and available for work and whether the claimant was discharged for 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: Mandy Horn was employed by Good Samaritan Society, Inc. from October 2004 until February 14, 2012 when she was discharged from employment. Ms. Horn was suspended pending an investigation on or about December 28, 2011. Ms. Horn last held the position of part-time charge nurse and was paid by the hour.

Ms. Horn was suspended on or about December 28, 2011 while the employer investigated an allegation that the claimant had given a pill from a blister pack belonging to a resident to another individual. Ms. Horn had denied the allegation. The claimant had been specifically informed during the investigation that the employer was not concerned about whether the claimant had provided her personal medication to another individual and had stated that the employer was not concerned with that issue. Subsequently, the claimant was informed by letter that she had been discharged because she had provided her personal medication to another individual on one occasion.

## REASONING AND CONCLUSIONS OF LAW:

The first question before the administrative law judge is whether the evidence in the record establishes that the claimant was able and available for work after being suspended from employment. She was. The next question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

The employer has the burden of proof in this matter. See Iowa Code § 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. 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. of Appeals 1992).

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

The evidence in the record establishes that the claimant was initially suspended pending an investigation into an allegation that Ms. Horn had given a prescription medication belonging to a resident to another individual. The evidence establishes that Ms. Horn had denied the allegation and that the claimant was specifically told that the company was not investigating or concerned about the claimant providing her own personal medication to an individual on one occasion. Subsequently, however, the claimant was informed by letter that she had been discharged for the offense that the employer had earlier stated was not relevant to the decision of whether the claimant would be terminated.

Although the employer filed an appeal in this matter stating the claimant had been discharged from employment, the employer elected not to participate in the hearing. The administrative law judge concludes based upon the evidence in the record that the employer has not sustained its burden of proof in establishing intentional, disqualifying misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, providing the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated March 8, 2012, reference 01, is affirmed. Claimant is able and available for work. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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