

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PATRICIA C KLICHER**  
Claimant

**APPEAL NO. 10A-UI-02815-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NORTHCREST INC**  
Employer

**OC: 01/24/10**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated February 16, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 19, 2010. Claimant participated. Employer participated by Teresa Kenton, chief financial officer and director of human resources. The record consists of the testimony of Teresa Kenton; the testimony of Patricia Klicker; and Employer's Exhibits 1-3.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a continuing care facility located in Ames, Iowa. The claimant worked in the intermediate care facility as a full-time charge nurse. The claimant was a registered nurse. She was hired on April 26, 2007. Her date of termination was January 22, 2010.

The main reason the employer decided to terminate the claimant was the employer's belief that the claimant did not timely dispense pain medication to two or three residents. The specific dates on which these incidents occurred was not specified. The employer learned about it when doing staff evaluations in December 2009 and January 2010. A couple of staff members indicated concerns about how the claimant was dispensing pain medication. The claimant was placed on suspension on January 19, 2010, while an investigation was conducted. She was then terminated on January 22, 2010.

One of the incidents investigated by the employer concerned a resident who had demanded pain medication, specifically a Tylenol tablet. The claimant was reluctant to give the resident the tablet because three hours earlier he had been given a stronger pain medication that included Tylenol. The claimant could not get the resident to understand that there were limits

on the amount of Tylenol he could take. A second incident concerned a resident who wanted a Tylenol before bedtime. Often when the claimant went to give the resident the Tylenol, she would be sleeping. The claimant felt that she should not wake the resident to give her the medication. There were no orders that she should wake the resident.

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

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes good faith error in judgment or discretion. What the employer must show is carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988) The employer has the burden of proof to show misconduct.

After carefully reviewing the evidence in the case, the administrative law judge concludes that there is insufficient evidence to show a current act of misconduct. The employer could not specify when the incidents that led to termination occurred and it was not entirely clear when the employer learned about the incidents where the claimant allegedly withheld pain medication.

Based on the claimant's testimony, she was exercising nursing judgment not to wake the patient who had requested the Tylenol and was attempting to prevent the other resident from taking too much Tylenol. The claimant may have used poor judgment in not discussing both situations with the clinical director, since an argument had ensued with the resident demanding his pain medication. However, the greater weight of the evidence does not show that the claimant's actions rise to the level of misconduct, particularly a current act of misconduct. Benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated February 16, 2010, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs