

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EVANS SHINAALI
Claimant

APPEAL NO: 07A-UI-07423-DW

**ADMINISTRATIVE LAW JUDGE
DECISION**

INTRUST
Employer

OC: 07/01/07 R: 02
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's July 27, 2007 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits, and the employer's account was not subject to charge because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on September 13, 2007. The claimant appeared at the hearing with his attorney, Robert Wright. Kristina Stanger, attorney at law, represented the employer. Jane Jones and Karen Blackburn testified on the employer's behalf. During the hearing, Employer Exhibits One through Five and Claimant Exhibit A were offered and admitted as 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in 1999. The claimant worked as a full-time home care aide. Jones became the claimant's supervisor in October 2006. The employer does not allow a home care aide to diagnose, prescribe or administer medication. If a medical concern arises, the employer expects the home care aide to contact a nurse or Jones to find out if there should be a deviation from the treatment plan the treating physician approved. (Employer Exhibits One through Four.)

On June 23, 2007, the claimant noticed resident A had not had a bowel movement for more than two days. The claimant contacted the nurse. The nurse told the claimant he could give resident A milk of magnesia. The claimant did not give resident A any milk of magnesia because he did not believe there was any at the home and he could not leave the resident alone to get any. Resident A had a bowel movement later on June 23.

The claimant did not work again at resident A's home until June 29. When the claimant returned to resident A's home on June 29, he noticed the resident had not had a bowel movement since June 23. The claimant also noticed that each day the nurse told the home care aide to give the resident milk of magnesia. The days the claimant had not worked for resident A, home care aides who cared for resident A called the nurse to see what course of action to take. Each day the nurse told the home care aide to give Resident A milk of magnesia. The resident received the milk of magnesia in a tablet form.

In an attempt to help resident A, on June 29, the claimant asked a family member to go to Walgreens and pick up some milk of magnesia. The family member bought the liquid milk of magnesia. The claimant read the directions on the bottle and gave the resident the milk of magnesia. The claimant did not call the nurse before he gave the resident anything. The claimant recorded in the logbook that he had given the resident eight ounces of milk of magnesia.

When Blackburn reported to work to relieve the claimant, she noticed the amount of milk of magnesia the claimant indicated he had given resident A. Since eight ounces exceeds the recommended dosage, she questioned the claimant about how much he had given the resident. Upon questioning, the claimant showed Blackburn he had used the measuring device that came with the milk of magnesia. The claimant followed the instructions and gave resident A the printed dosage. Blackburn reported this incident to the employer.

On July 2, 2007, the employer discharged the claimant for the June 29 incident. The employer concluded the claimant violated the employer's rules when he prescribed and administered over-the-counter medication without a nurse's directive to do so. (Employer Exhibit Five.)

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established compelling business reasons for discharging the claimant. Under the same circumstances, this administrative law judge would make the same decision because the claimant did not follow the proper procedure and call the nurse or Jones. The facts do not, however, establish that the claimant intentionally disregarded the employment interests or

policies. The claimant used poor judgment when he assumed he could give the resident milk of magnesia since this was the directive the nurse gave him on June 23 and to other employees since June 23. The claimant may even have been negligent, but his negligence does not constitute work-connected misconduct. While Blackburn had cause to question the amount of milk of magnesia the claimant gave the resident on June 29, the facts do not establish that he gave the resident too much milk of magnesia.

Even if the employer considered the claimant's recent suspension, (Claimant Exhibit A) which the employer denied doing, the facts still do not establish that the claimant committed work-connected misconduct. As of July 1, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's July 27, 2007 decision (reference 02) is reversed. The employer discharged the claimant for compelling business reasons. These reasons do not rise to the level of work-connected misconduct. As of July 1, 2007, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs