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

ELIZABETH A ADAMS
Claimant

APPEAL NO: 11A-UI-06048-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIVE STAR QUALITY CARE INC
Employer

OC: 04/03/11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Elizabeth A. Adams (claimant) appealed a representative's May 2, 2011 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Five Star Quality Care, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 3, 2011. The claimant participated in the hearing. Lori Piziali appeared on the employer's behalf. One other witness, Ted Powell, was available on behalf of the employer but did not testify. 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 September 23, 2010. She worked full time as a registered nurse at the employer's Des Moines, Iowa facility, first as a medications nurse, and subsequently as a charge nurse. Her last day of work was January 21, 2011. The employer discharged her on January 28, 2011. The stated reason for the discharge was having too many medication errors including with controlled substances.

The claimant had documented medications errors on October 7, October 12, and October 25, 2010. The claimant personally acknowledged on the documentation for the October 12 error that she needed to slow down and be more careful. After the October 25 error, the employer gave the claimant a final warning and an action plan for improvement on November 5. The claimant was able to go from November 5 until December 31 without making further medication errors. On December 31 there was an additional medication error in the failure to apply a medication patch.

On January 15, 2011 the claimant only administered half the specified dosage of a controlled substance, Klonopin, to a resident. On January 16 the claimant completely failed to administer

the same medication as directed to the same resident. These errors were discovered in a controlled substances audit on January 18.

The claimant was off work after January 21 because of the hospitalization of her mother, although the employer also was seeking to contact the claimant to discuss the additional medication errors before the claimant returned to work. The claimant was not available for discussion until January 28. At that time, because of the number of and severity of the medication errors, the employer discharged the claimant.

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); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

While the specific incidents on January 15 and January 16 may not have individually been deliberate or on purpose, the claimant's repeated making of errors after prior warnings and after having demonstrated an ability to perform her duties without such errors shows such a degree of recurrence as to "manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard" of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's May 2, 2011 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of January 21, 2011. This disqualification continues until

the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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