

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KATIE L JOHN**  
Claimant

**APPEAL NO. 11A-UI-12276-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CHRISTIAN OPPORTUNITY CENTER**  
Employer

**OC: 08/14/11  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct  
871 IAC 24.31(8) – Current Act

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated September 8, 2011, reference 01, that held the claimant was not discharged for misconduct on August 10, 2011, and which allowed benefits. A telephone hearing was held on October 12, 2011. The claimant participated. Angela DeCook, HR director; Connie Voegeli, program manager; Cassie Mikkelsen, medication aide; Karla Pelkey, co-worker; and Stephanie Johnson, RN, participated for the employer. Employer Exhibits 1 through 16 were received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began employment on August 12, 2009, and last worked for the employer as a full-time work skills supervisor on August 10, 2011. She received the employer's policies, which included a prohibition against interference with medication administration.

Medication aides complained to the employer that one or more workers had interfered with medication administration. Nurse Johnson issued a memo to claimant and other non-medication administration workers to review the interference policy on July 20. Johnson had given specific instructions to claimant about her conduct with resident Cheryl in response to interference complaints.

On August 3, the employer had a meeting with claimant and other non-medication administration workers about medication interference complaints. On August 5, the claimant was subject to a formal counseling for confronting a co-worker, Pelkey, with personal issues. When claimant requested Pelkey to cease talking about an off-work-related incident, claimant was shoved and pushed by her.

The August 5 formal counseling written report does not list a violation of the employer medication administration but, rather, the overall staff behavior policy and productive work environment policy. There is an isolated paragraph where the counseling refers to claimant attempting to speak to med aide Pelkey, who re-minded claimant not to distract her. The focus of the counseling is claimant's conduct during the incident involving Pelkey on August 1, and it is that issue claimant responded to in her comments.

On August 10, the claimant provided food and drink to a resident unaware that a medication aide was preparing to pass medications. She was suspended that day and discharged for interference with medication administration on August 15, 2011.

#### **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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for a current act of misconduct in connection with employment when she was suspended on August 10, and terminated on August 15, 2011.

While claimant and co-workers were advised of the non-interference with medication administration on July 20 during a meeting, this was not a disciplinary action. The primary focus of the employer's formal counseling issued to claimant on August 5 was her conduct involving employee Pelkey, which is confirmed by the policy references contained therein. While the employer mentions a medication interference issue, there is no policy violation referenced (Administration of Medication), and a plain reading of the entire document (5 pages) would not put a reasonable person on notice that a further incident involving this issue would lead to termination. The fact that claimant directed her comment objections without addressing this issue is supportive of this conclusion.

Claimant offered credible testimony she was not aware that her giving the resident food and drink was during the act of medication administration. Considering that Pelkey was an adverse witness who had been involved in the earlier incident on August 1, her testimony is discounted. The evidence is not clear given the setting for medication administration to the resident on August 10 that claimant intentionally interfered.

**DECISION:**

The department decision dated September 8, 2011, reference 01, is affirmed. The claimant was not discharged for a current act of misconduct when suspended on August 10 and discharged on August 15, 2011. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw