

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORI COONFARE

Claimant

APPEAL NO: 13A-UI-02050-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC

Employer

OC: 01/20/13

Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 15, 2013, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 19, 2013 and continued on April 30, 2013. The claimant participated in the hearing. Dorinda Krueger, Administrator, participated in the hearing on behalf of the employer. Employer's Exhibits One through Seven and Claimant's Exhibit A were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time Director of Health Information Management for Good Samaritan Society from May 23, 1994 to January 17, 2013. The claimant was responsible for making sure doctors' orders and patient medical records are complete and processed correctly. She is an LPN and in her position as director of health information management she was expected to help the nurses with doctors' orders on a daily basis. All orders go through the claimant's office to be processed and entered into the employer's system. The nurses gave the claimant medication orders and she filed them in her office. She was held to the same standards as the nursing staff.

On January 15, 2013, the claimant was helping process orders at the nurses' station, which was not part of her daily responsibilities, and then returned to her office to enter orders into the computer system. While the claimant was at her desk the nurse manager handed her three prescriptions, told her the resident's name and asked her if she could file them for her. The claimant maintains two large file cabinets containing the overflow of patient charts that do not fit in the files at the nurses' station. She goes through files and cleans them up before filing them in the file cabinets in her office. The cabinets are unlocked when she is in her office but locked whenever she is gone as the claimant had been trained to do. The administrators, director of nursing (DON), three nurse managers, maintenance and the charge nurse all have keys to the

claimant's office. The claimant did not look at the prescriptions because the nurse manager asked her to file them and consequently the claimant did not realize two of the three narcotic scripts needed to be filled that day and one was scheduled to be filled January 19, 2013. It was rare for the claimant to be handed narcotic prescriptions directly as they are usually processed at the nurses' station which contributed to the claimant not recognizing that the scripts needed to be processed and filled.

On January 17, 2013, the claimant was not scheduled to work until noon because of a low census. During a daily oversight check a nurse discovered the resident had been prescribed narcotic medication January 15, 2013, and checked with the pharmacy to see if the scripts had been processed. The pharmacy had no record of the prescriptions being sent to be filled so the nurse notified the DON who located the scripts in the claimant's office. The employer prepared a suspension pending investigation and determined the claimant was in violation of the employer's Code of Ethics policy because the resident did not receive his pain medication and then terminated the claimant's employment effective January 21, 2013, because she was also on a final written warning (Employer's Exhibits Two, Five and Six).

The claimant received a written warning March 18, 2012, for inconsiderate treatment of others. On March 8, 2012, a consultant met with the staff managers and the warning stated the claimant "proceeded to tell stories about overhearing a resident's conversation with another resident on March 5, 2012, and during the meeting told everyone how staff come into her office to talk about their personal issues" (Employer's Exhibit One). Administrator Dorinda Krueger had met with the claimant March 5, 2012, "regarding her visiting with staff in her office for long periods of time and also how she overheard a conversation and instead of allowing nurse manager to handle resident concern she went to the social worker in which (Ms. Krueger) overheard her talk about another employee (Employer's Exhibit One). Ms. Krueger indicated it was her expectation that private conversations between the claimant and other employees about their concerns "do not need to be reiterated during meetings with other staff to justify why she is doing them. If the behaviors of this type continue, the correction action process will progress and could ultimately result in termination" (Employer's Exhibit One).

On March 22, 2012, the claimant received a final written warning for inconsiderate treatment of others (Employer's Exhibit Two). During a meeting with Ms. Krueger March 19, 2012, Ms. Krueger instructed the claimant to write a document regarding how she was "going to improve her behavioral performance relating to visiting with staff and begin working with other staff and leadership team to become part of that team. Wednesday, March 21, 2012, at noon was given as deadline. At noon on Wednesday, Administrator did not have plan and no communication was made by Lori stating it would not be completed by Wednesday at noon" (Employer's Exhibit Two). Ms. Krueger also stated she expected the claimant to make a deadline of that nature a high priority and if she could not meet the deadline she should communicate that to Ms. Krueger (Employer's Exhibit Two). The claimant explained that she was scheduled to have a colonoscopy March 21, 2012, and "worked hard to get pretty caught up because I was going to be gone on Wednesday. I left at 4 to start my colonoscopy prep at 4:30. I got sick from the medication, so spent most of the evening (besides in the bathroom) in bed. I could not function to do my paper on Tuesday evening. I apologize" (Employer's Exhibit Four). The claimant did submit her paper March 21, 2012, but not until 5:50 p.m. (Employer's Exhibit Three).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

The employer has the burden of proving disqualifying misconduct. 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 substantial and 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).

A nurse manager asked the claimant to "file" three prescriptions for a resident March 15, 2013, and the claimant did so without looking at the scripts. It was rare for the claimant to be asked to have prescriptions filled and consequently she simply filed the scripts in her office filing cabinets which contain overflow from patient charts at the nurses' station and was not aware the prescriptions were for narcotic pain medication. When the claimant was trained she was instructed that the filing cabinets could be left unlocked when she was gone and her office was locked as several other managers had keys to her office and could access the files if needed. The claimant obviously and admittedly made a mistake in filing the prescriptions, rather than having the pharmacy fill them, thus denying the resident needed pain medication for two days. Her error, however, was not intentional but rather an oversight that could potentially happen to any employee under the same circumstances.

The claimant was on a final written warning for turning in a paper stating how she was going to improve her “behavioral performance relating to visiting with staff” and become part of the leadership team at 5:50 p.m. March 21, 2012, instead of by noon on that date as directed by Ms. Krueger. While the claimant did miss the deadline imposed by Ms. Krueger March 19, 2012, she was scheduled to have a colonoscopy March 21, 2012, and “worked hard” to catch up March 20, 2012, before leaving to start the preparation for her colonoscopy that day because she was having the procedure March 21, 2012. The claimant tried to meet the deadline and did succeed in producing the paper the day it was due but was five hours late in doing so.

The claimant worked for the employer for nearly 13 years. The employer cited three incidents that led to the claimant’s termination: the prescription filing error; the missed deadline for her paper; and her alleged excessive talking too much to other staff members. While the claimant did not meet the employer’s expectations, the administrative law judge concludes the claimant’s actions do not rise to the level of intentional, disqualifying misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The February 15, 2013, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css