

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHRYN A SCHLUETER
Claimant

APPEAL NO. 09A-UI-15931-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ASSISTED LIVING CONCEPTS INC
Employer

OC: 08-16-09
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 13, 2009, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on November 30, 2009. The claimant did participate. The employer did participate through Tim Dunne, Regional Director Operations. Employer's Exhibit One was received.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a medication manager personal services assistant full time beginning September 24, 2007 through September 11, 2009 when she was discharged.

The claimant was discharged for making a medication error. The claimant indicated on the medication administration record (MAR) that she had given medication to a resident when in fact the resident had refused the medication. The claimant realized that she had failed to change the MAR to indicate that the resident had refused the medication until after she had already left the facility. Under the employer's policies an employee is not allowed to return to the facility once they have completed their shift. The claimant called the facility and spoke to another employee and told her to leave a note on the MAR that the claimant would change the MAR when she returned for her next work shift. When she returned the claimant was discharged by her supervisor, Sandra Headid.

Prior to this incident the claimant had filed a complaint that when she reported a work-related injury to Ms. Headid, Ms. Headid did not take the proper steps to report the injury to upper management and to insure that the claimant received medical treatment for her work-related incident. At hearing Mr. Dune confirmed that the claimant's supervisor, Ms. Headid, had in fact been disciplined herself for her failure to properly report the claimant's work related injury. After being disciplined Ms. Headid told the claimant that she was going to insure that the claimant was fired. Ms. Headid told the claimant she should just quit because she, Ms. Headid, was

going to make sure that the claimant was fired. Other employees committed medication errors in much greater number than the claimant, but they were not disciplined, or if they were disciplined, it was not as severe as the claimant's. The claimant's disciplinary history shows a sharp increase in write up for her after the July 13 injury, when Ms. Headid told her she would get her fired since she was mad that the claimant caused her to get written up herself.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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 proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351

N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Claimant's testimony is credible about the lack of warnings regarding the issues related to the separation prior to Ms. Headid's discipline for failing to properly pursue the claimant's report of a work-related injury.

While employer claims that claimant was discharged because of her medication errors, such is not established based upon the discipline and treatment of other employees for the same or similar errors. The administrative law judge is persuaded that Ms. Headid treated the claimant differently than other employees and specifically sought to fire her in retaliation for Ms. Headid's own subsequent discipline. Such is not sufficient misconduct to disqualify the claimant from unemployment insurance benefits. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The October 13, 2009 reference 03, decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css