

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

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2466 KENWOOD AVE  
NEW HAMPTON IA 50659-9596

NEW HAMPTON CARE CENTER INC  
950 SPYGLASS CIR  
DAKOTA DUNES SD 57049

Appeal Number: 06A-UI-04936-DWT  
OC: 06/05/05 R: 03  
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the *Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.*

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

New Hampton Care Center, Inc. (employer) appealed a representative's May 1, 2006 decision (reference 02) that concluded Sandra L. LaVelle (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 12, 2006. The claimant participated in the hearing. Judy Passmore, the director of nurses, Stacy Kunce, the assistant director of nurses, and John Alvarez, the administrator, appeared on the employer's behalf. 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 on September 12, 2005. The employer hired the claimant to work as a full-time charge nurse. The claimant is a registered nurse and worked the 2:00 p.m. to 10:00 p.m. shift. During her employment, the employer noticed several performance issues with the claimant.

On November 30, 2005, the claimant received a written warning for improper disposal of psychotropic drugs. On February 17, 2006, another nurse noted medicine for a resident had been placed together as if it was wasted medication. The wasted medication was not properly disposed. The employer talked to the claimant about this incident in early March after learning about this mid-February incident. In mid-March, the employer learned the claimant again put medication of a resident in a container as though the medication was wasted. The claimant again did not take the necessary procedures to get rid of waste medication. The employer did not say anything to the claimant about this because the employer started documenting problems with the claimant in an attempt to decide whether the claimant's employment would continue.

On March 27, the employer asked the claimant to watch a potential suicide resident. This meant the claimant or someone had to observe the resident every 15 minutes. Employees reported that the claimant complained about having to do the suicide watch and asked other employees to help with this assignment.

On March 29, the claimant obtained a one-time order to give a resident some medication. The claimant did not record the order or that she had given the resident this medication. After reviewing the medication sheet, the employer discovered the claimant administered the medication to the resident.

On March 31, the employer discharged the claimant for repeated medication errors and her work attitude. While the claimant asked for another nurse when she worked, the employer concluded the facility had adequate staffing during the claimant's shift and the claimant should have performed her work satisfactorily.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 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).

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. 871 IAC 24.32(8).

The facts establish the claimant did not dispose of wasted medication properly, primarily because she forgot about doing this at the end of her shift when another nurse was available to verify medication had been disposed. Even though employees reported concerns about the claimant when she made comments about having to monitor a suicide resident, this job was done and the resident was monitored. Neither of these two concerns constitutes work-connected misconduct.

The claimant's failure to record medication given to a resident on March 29 is another matter. The claimant made a major mistake when she did not document medication given to a resident. For this reason in conjunction with the other noted concerns, the employer established compelling business reasons for discharging the claimant. The facts do not, however, establish that the claimant intentionally failed to perform her duties satisfactorily. She made a mistake. Under the facts of this case, the claimant did not commit work-connected misconduct. The claimant is qualified to receive unemployment insurance benefits as of April 2, 2006.

**DECISION:**

The representative's May 1, 2006 decision (reference 02) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of April 2, 2006, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/cs