

**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**

**JAN E JOHNSTON
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CORALVILLE IA 52241**

**MERCY HOSPITAL
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**Appeal Number: 05A-UI-07594-D
OC: 06/26/05 R: 03
Claimant: Appellant (2)**

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Jan E. Johnston (claimant) appealed a representative's July 18, 2005 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Mercy Hospital (employer). After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on November 16, 2005. The claimant participated in the hearing, was represented by legal intern Matt Moothart supervised by Lois Cox attorney at law, and presented testimony from one other witness, Bonnie Terrill. The employer failed to respond to the hearing notice and appear at the time and place set for the hearing, and therefore did not participate in the hearing. During the hearing, Claimant's Exhibit A was entered into evidence. Based on the evidence, the arguments of the claimant, 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 or about June 1, 1989. She worked full time as a staff nurse on the Saturday and Sunday 12-hour weekend option. Her last day of work was June 24, 2005. The employer discharged her on that date. The reason asserted for the discharge was alleged falsification of documentation.

On June 19, 2005, the claimant was performing a required change of a patient's IV tubing. As part of this process she also needed to change the tubing on the patient's pain management (morphine) pump. She unlocked the morphine pump box and removed the old tubing from the needle. She did not replace the needle, but attached it to the new tubing and flushed the new tubing with about two milliliters of morphine before reattaching the pain line to the regular IV line. The claimant had encountered some delay in getting the line changed, as she initially had not brought the proper tubing for the pain line into the room with her; she had gone out to retrieve the proper tubing herself, as there was a gathering in a back area at the time, so there was no other nurse at the nurse's station that could have gotten the proper tubing to the claimant more quickly than if the claimant were to get the tubing herself. Given that there had been a slight delay in getting the IV re-established, claimant then wanted to quickly get the tubing connected to the patient to restore the flow of medication. She proceeded to flush the pain line and connect it to the patient without having the flushing process witnessed. There was no clear standard as to whether or how pain medication that is lost through flushing of a tube was to be documented or witnessed.

The claimant did document her steps in the patient's pain flow sheet. A few hours later, she brought Ms. Terrill, another nurse, into the room and explained what she had done, and asked Ms. Terrill to acknowledge that she understood what the claimant had done. One of the two transposed the measurement of pain medication in the unit at that time.

The discrepancy came to the employer's attention on or about June 20, 2005. The initial concern was that there was morphine that was unaccounted for. However, the employer became satisfied that there was no missing morphine, but then became concerned that the claimant had Ms. Terrill initial the pain flow sheet when she did not witness the flushing of the tubing; the employer was not satisfied with the claimant's explanation that she had Ms. Terrill initial only to acknowledge she had understood the claimant's description of how she had handled the change in the medication tubing. As a result, the employer discharged the claimant. The claimant had not received any prior performance or documentation warnings.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right to terminate the claimant's employment, 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 is misconduct that warrants denial of unemployment insurance benefits are two separate questions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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 section 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 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or

2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer's interest, or
 2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is the claimant having Ms. Terrill initial her description of the process of changing and flushing the pain medication tubing. Under the circumstances of this case, the claimant's action was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's July 18, 2005 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

ld/kjw