

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN J BIERMAN
Claimant

APPEAL NO. 07A-UI-00080-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCOTTISH RITE PARK INC
Employer

**OC: 12/03/06 R:0 2
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Scottish Rite Park, filed an appeal from a decision dated December 22, 2006, reference 01. The decision allowed benefits to the claimant, Susan Bierman. After due notice was issued, a hearing was held by telephone conference call on January 22, 2007. The claimant participated on her own behalf. The employer participated by Human Resources Manager Nicole Hammer.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Susan Bierman was employed by Scottish Rite Park from May 23 until December 4, 2006. She was a part-time receptionist. As part of the receptionist's duties, the claimant would receive bottles of prescription medication for the residents and then distribute them when the residents, or their authorized representative, came to the desk. In early November 2006, certain changes were made to the distribution policy in that certain residents were not to pick up their own medication and it should only be given to the certified nursing assistants. This was because these residents would either not take the medication or would actively seek to destroy it.

On November 27, 2006, the claimant gave a bottle of medications to one of the residents who was not to receive it personally because he did not like to take the medication as instructed. She notified one of the nursing assistants about ten minutes later and another assistant was immediately sent to the resident's room where she found him preparing to flush the entire bottle down the toilet.

The incident was brought to the attention of Human Resources Manager Nicole Hammer who discussed the incident with Ms. Bierman. The claimant acknowledged she had gotten busy and made a mistake. She was told there would be an internal investigation and she could be discharged depending on the conclusion. After Ms. Hammer interviewed both the nursing assistants involved, she conferred with the administrator. The administrator felt the claimant's

actions constituted a serious threat to the well-being of the residents and instructed the human resources manager to discharge her. Ms. Hammer notified the claimant of the discharge on December 4, 2006.

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.

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 claimant did make an error by giving the medication to a resident who was not supposed to receive it personally. The change in the distribution policy was fairly new but there is no evidence the claimant had made such errors in the past. While she claims to have "physical and mental disabilities" which qualify her for special accommodations under the Americans with Disabilities Act, she was unable to provide any doctor's statement which specified exactly what accommodations an employer should be providing to her. There is no evidence the employer was even aware of the alleged disability, other than that she was a recipient of social security benefits.

In any event, this was the sole reason for the discharge. Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits.

Newman v. IDJS, 351 N.W.2d 806 (Iowa App. 1984). The claimant realized her error in time to avoid any harm to the resident and appears to be a one-time error rather than a final incident in a long series of similar errors. The record does not establish misconduct serious enough to warrant a denial of unemployment benefits.

DECISION:

The representative's decision of December 22, 2006, reference 01, is affirmed. Susan Bierman is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css