

**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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**Appeal Number: 06A-UI-07563-S2T  
OC: 06/25/06 R: 02  
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 for Misconduct

STATEMENT OF THE CASE:

Bremer County Auditor (employer) appealed a representative's July 20, 2006 decision (reference 01) that concluded Stewart Dalton (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 15 and 16, 2006. The claimant was represented by Laurie Pederson, Attorney at Law, and participated personally. The employer was represented by Lynn Smith, Attorney at Law, and participated by Judy Stevenson, Human Resources Manager; Susan Lahr, Quality Assurance Manager; and Rebecca Shoemaker, Service Coordinator.

## FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on April 16, 2002, as a full-time service manager. During the claimant's employment there were no warnings that the claimant received regarding his work performance. The claimant visited consumers and oversaw the distribution of medications. Some consumers resided in their own residences and some were in the employer's facility. The claimant was trained on medication management on May 14, 2002, and attended a refresher course on May 24, 2006.

The claimant understood that some consumers had few or no restrictions. These consumers had rights that included not being forced to wake up at a certain time, restrictions on entering the residence or room without permission and not being forced to take medications without their permission. These rights sometimes were contrary to a physician's indication that medication should be taken at a certain time. In addition, the claimant understood that should a medication error be made, he was to notify the physician first. Next, he was to follow the physician's instructions, notify his administrator, and document the situation.

On June 17, 2006, the claimant went to the residence of a consumer without restrictions, living on his own. He arrived at 6:00 p.m. to find that a co-worker had failed to fill the consumer's prescription medication. The prescription should have been filled four days in advance of running out by the co-worker. He contacted the pharmacy by automated system because the pharmacy was closed for the day. He discovered the prescription had been filled but not collected. The claimant followed the employer's procedure for discovering a medication error. He contacted the physician. The physician told the claimant the consumer could take his medication the following morning. The claimant notified his administrator and filed a medication error report.

The employer felt the claimant acted inappropriately when he did not call a pharmacist to come in after hours so the claimant could obtain the medication. The employer did not discuss the issue with the claimant. The employer did not terminate the co-worker for failure to follow procedures.

On June 24, 2006, the claimant stopped at the facility and banged on the door of a consumer at approximately 8:00 a.m. The consumer's physician indicated the consumer should take his insulin and other medications at 8:00 a.m. The consumer refused to get up and take his insulin. The claimant continued working, doing other duties. At approximately 9:00 a.m. the claimant again banged on the door of the consumer. The consumer did not want to get up. At approximately 10:00 a.m. the consumer arose, attended to his toiletries and took a shower. Before he ate, the consumer tested his blood, measured, and injected himself with insulin. The claimant handed the consumer a divided pill container and the consumer took his other medications.

Later that day, a supervisor noticed that the consumer had taken the evening medication rather than the morning medication. The supervisor telephoned the claimant. The claimant did not remember the situation and acknowledged he should have checked the pill container to see if the consumer took the correct medication. The supervisor did not notify a physician.

On June 25, 2006, the claimant stopped in at 8:00 a.m. to see the same consumer as he saw on June 24, 2006. The consumer again refused to get up and take his insulin. As he did the previous day, the claimant continued doing other duties. At approximately 9:00 a.m. the

claimant again banged on the door of the consumer. The consumer did not want to get up. At 10:00 the claimant took his medications.

On June 28, 2006, the employer told the claimant he was terminated for making medication errors on June 17, 24 and 25, 2006.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons, the administrative law judge concludes he was not.

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 proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer discharged the claimant and has the burden of proof to show misconduct. The employer did not provide sufficient evidence of misconduct at the hearing. Due to the employer's contradictory policies, the claimant could not follow the physician's orders without violating the consumer rights. In addition, the employer did not treat all its employees equally. A co-worker who failed to provide medication to a consumer, causing the consumer to miss his dosage altogether, continues to work for the employer. A supervisor who knows of a medication error and fails to follow the employer's policies by notifying a physician continues to work for the employer. The employer

has not proven any misconduct on June 17, 2006. The employer has proven the claimant made a medication error on June 24, 2006, by not recognizing immediately that the consumer took the wrong pills. The employer has proven that if the claimant had insisted that the consumer get out of bed for his 8:00 a.m. medication on June 24 and 25, 2006, the claimant would have violated the consumer's rights. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's July 20, 2006 decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

bas/kjw