

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERESA L KNUDSON
Claimant

APPEAL NO. 14A-UI-12123-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WESLEYLIFE
Employer

**OC: 10/26/14
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Teresa Knudson (claimant) appealed a representative's November 21, 2014, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Wesleylife (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 9, 2014. The claimant participated personally. The employer was represented by Inga Green, Hearings Representative, and participated by Kristin Meyer, Director of Nursing. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 18, 2013, as a full-time licensed practical nurse. The claimant signed for receipt of the employer's handbook on October 18, 2013. She attended in-service training on proper procedures for passing medication on November 12, 2013, November, 23, 29, July 23, and September 17, 2014. On February 24, 2014, the claimant completed an internet module devoted to correct passing of medication. On May 1, June 6, August 12, and 18, 2014, the employer sent the claimant and all nurses, e-mails regarding the correct passage of medication. The claimant understood she was to check three times to make certain she was giving the correct medication to the correct resident.

The employer issued the claimant a written warning on March 13, 2014, for issuing incorrect dosages of medication to a resident on March 8 and 12, 2014. On October 23, 2014, the employer issued the claimant a written warning and a clarification written warning on October 24, 2014, for a medication error on October 19, 2014. Each time the employer issued a written warning it notified the claimant that further infractions could result in termination from employment. The claimant also made medication errors on December 19, 2013, February 24, April 15, and July 26, 2014.

On October 29, 2014, the claimant was to give medication to a resident. On October 30, 2014, the employer found the October 29, 2014, medication still in the card. The claimant told the employer she was sure she gave the medication. She thought perhaps the previous person who passed out medication did not and the claimant pushed the pills out for the wrong day. The employer terminated the claimant for a medication error in either failing to issue the medication or failing to issue the medication from the correct day's pill pack.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not eligible to receive unemployment insurance benefits.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. Henry v. Iowa Department of Job Service, 391 N.W.2d 731 (Iowa App. 1986). Repeated unintentionally careless behavior of claimant towards subordinates and others, after repeated warnings, is misconduct. Greene v. Employment

Appeal Board, 426 N.W.2d 659 (Iowa App. 1988). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's November 21, 2014, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs