

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GARY L SEVERSON
Claimant

CARE INITIATIVES
Employer

APPEAL 15A-UI-12781-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/25/15
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge/Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
871 IAC 24.10 – Employer Participation in the Fact-Finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the November 10, 2015 (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 8, 2015. Claimant participated. Employer participated through Tina Wendt, Administrator, and was represented by Emilia Gallagher of Equifax. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as an R.N. charge nurse beginning on September 9, 2015 through October 21, 2015; when was discharged. The claimant was arrested by the Linn County Sheriff on October 20 and charged with theft of schedule 4 and 5 narcotics. This event occurred when prior to his employment with this employer. On October 21, the claimant called the administrator, Ms. Wendt, and told her that when he was employed with his prior employer one of the residents passed away and he took 8 Lorazepam that had been prescribed for the resident. The claimant specifically admitted to Ms. Wendt that he had committed theft of narcotics. He also told her that he did not know what he was thinking when he took the medication. Based on the claimant's admission of theft of narcotics from another employer, the employer discharged him. As a nurse for this employer the claimant would have had access to all kinds of narcotic medication. Since he had admitted stealing narcotics, the employer could not trust him to be around the medication for their residents.

The claimant has not received any unemployment benefits after his separation from this employer, thus the issue of whether he is overpaid unemployment insurance benefits and whether the employer participated in the fact-finding interview is moot.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, Id. In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias, and prejudice. *State v. Holtz*, Id.

The administrative law judge finds the testimony of Ms. Wendt persuasive that the claimant did admit the theft of narcotics from his former employer. Knowing that the claimant as a nurse would have access to their resident's narcotic medications, the employer has established job connected misconduct sufficient to disqualify the claimant from unemployment insurance benefits. Benefits are denied.

DECISION:

The November 10, 2015 (reference 01) decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

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