

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURA CADE
Claimant

APPEAL NO: 11A-UI-13673-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

HCM INC
Employer

**OC: 09-18-11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 4, 2011, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 14, 2011. The claimant participated in the hearing. Diane Schaffner, Administrator, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time RN for HCM Inc. from March 10, 2011 to September 14, 2011. The facility had experienced an outbreak of scabies and on September 1, 2011, the claimant gave a resident who had scabies previously the cream she was prescribed before without waiting for the doctor's orders which were the same as what the claimant gave the resident when they arrived a few hours later. The claimant technically violated the employer's policy by giving the resident the medication she was previously given for the same circumstances and condition. The claimant was suspended pending further investigation but the employer never contacted her. The DON told the claimant September 14, 2011, it was a terminable offense and even though she understood why she did what she did that the employer would accept her resignation because a resignation would look better than a termination in her file. The claimant had not received any previous warnings of any kind during her employment and had no idea that her job was in jeopardy. She chose not to resign her employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). While the claimant may have technically violated the employer's policy and should have, in general, waited for the doctor's orders of how to treat the patient in question, the facility had problems with scabies and because the patient had been treated by a medicated cream prescribed by the same doctor a few months before for the same ailment, the claimant believed it was better to start treatment instead of waiting to start until after the doctor responded with the same order the claimant had already provided. This is not to say that under different circumstances the claimant's actions would not be considered misconduct. In this particular case, however, the administrative law judge cannot conclude that the claimant's actions rose to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The October 4, 2011, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css