

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CINDY L HAMER**  
Claimant

**APPEAL NO. 07A-UI-08779-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CLARKE COUNTY PUBLIC HOSPITAL**  
Employer

**OC: 08/12/07 R: 03  
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Cindy Hamer, filed an appeal from a decision dated September 5, 2007, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on October 23, 2007. The claimant participated on her own behalf. The employer, Clarke County Public Hospital (CCPH), participated by Human Resources Director Kate Emanuel and Chief Clinical Officer Vicki Irvin.

**ISSUE:**

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

**FINDINGS OF FACT:**

Cindy Hamer was employed by CCPH from June 11, 1983 until August 10, 2007, as a full-time registered nurse. She worked the 7:00 p.m. until 7:00 a.m. shift. In the early morning hours of July 26, 2007, a patient was showing signs of pain and the claimant noted on the chart she administered Tylenol as a suppository according to the orders of the patient's physician, Dr. Lower. These orders had not been given directly to claimant by the doctor at that time but were based on statements from Dr. Lower on a prior occasion that it was not necessary for her to call him in the night merely to change the manner in which the medication was given, orally or by suppositories.

The employer considered this to be a violation of the standing policies and protocols because this order was not officially listed, on file and approved by the physician as is required. Chief Clinical Officer Vicki Irvin became aware of it after randomly reviewing "occurrence reports" and the charge nurse on that shift had filled out when Dr. Lower had stated later on July 26, 2007, he had not been contacted by the nursing staff to change the manner in which the Tylenol was administered. He had earlier in the previous day written an order for a Tylenol suppository to be given once and did not consider the matter to be of any major significance but the occurrence report was filled out.

When Ms. Irvin reviewed the report on August 7, 2007, she questioned the claimant and was told Dr. Lower had previously given her verbal permission to change the administration of the Tylenol without having to consult him. The employer nonetheless considered the claimant to have been “practicing outside of the scope of her practice” by writing down the order as though it had been given by the doctor that day or was one of the standing orders or standing protocols. The claimant was discharged on August 10, 2007, by Ms. Irvin.

#### **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.

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The employer has asserted this “practicing outside the scope of the practice” as the only reason for the discharge. From the evidence and testimony received it appears this was done with the knowledge and consent of the charge nurse and was a not uncommon way of conducting care at the facility. The claimant genuinely believed she was acting within the scope of the doctor's orders and Dr. Lower himself did not consider it to be of any major significance as he had earlier in the day prescribed a Tylenol suppository rather than oral medication. The administrative law judge considers this to be a one-time error in judgment which does not rise to the level of substantial, job-related misconduct. 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).

**DECISION:**

The representative's decision of September 5, 2007, reference 01, is reversed. Cindy Hamer is qualified for benefits, provided she is otherwise eligible.

---

Bonny G. Hendricksmeier  
Administrative Law Judge

---

Decision Dated and Mailed

bgh/pjs