

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

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**JENNIFER E HAAFKE**

Claimant

and

**JACKSON RECOVERY CENTERS INC**

Employer

**HEARING NUMBER: 17BUI-00103**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION: 96.5-2-A**

**DECISION**

**UNEMPLOYMENT BENEFITS ARE DENIED**

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

The Claimant, Jennifer E. Haafke, worked for Jackson Recovery Centers, Inc. from April 28, 2016 through November, 29, 2016 as a part-time recovery counselor who often carried full-time hours. (11:35-12:22) The Claimant received a copy of the Employer personnel handbook for which she signed in acknowledgement of receipt soon after she started work. (27:39-27:58; 32:40-32:44; 33:00-33:04; 33:16-33:40; Exhibits 5-7) She also received a 12-day training that specifically addressed patient safety. (26:44-27:33) One policy guideline, in particular, provides equal sharing of patient responsibility. For example, if there are 12 patients in the facility, each counselor is responsible for 6; if there are 18, each counselor is responsible for 9 patients. (16:25-16:37) If a counselor has to leave the area, that person must obtain authorization as well as ensure that his or her patients are covered by another staff person. (16:56-17:24) The Claimant's primary job was patient care and safety for people recovering from addictions, or

behavioral and emotional disorders. (1:5:39, Exhibit 7)

On both November 24<sup>th</sup> and 25<sup>th</sup>, 2016, the Claimant violated two different company policies. (18:35-19:20) On the 24<sup>th</sup>, Ms. Haafke left the premises without permission to get mail and visit an ATM. (21:55-22:18; 1:00:55-1:01:03) The Claimant twice asked her co-worker (Bruce) if she could leave for what were unnecessary tasks at that time to which he twice told her 'no,' it was not a good time. (49:45-59:59; 50:12-50:30) Ms. Haafke was responsible for overseeing nine female patients that shift. She left the premises anyway without Bruce's knowledge (50:31-50:45) leaving him alone to supervisor 18 patients (both female and male) for approximately 40-45 minutes. (51:45-51:49; 52:45-53:10) This violated the patient to staff person ratio. (19:25-19:50; 21:15-21:21) The Claimant also jeopardized a patient's safety by taking that patient with her outside the premises, which was also against company policy unless that patient was scheduled for a doctor's appointment. (19:51-21:00; 21:30-21:42; 42:53-43:31; 59:10-59:44) The Claimant had never gotten the mail prior to this date (1:2:58-1:3:43); nor had any person of authority directed her to retrieve the mail at this time. (1:03:45-1:04:23) The Employer had warned Ms. Haafke against leaving under such circumstances during bi-monthly meetings. (23:25-23:49)

The next violation occurred on November 25<sup>th</sup> when the Claimant, out of curiosity and while accompanied with patients, bypassed safety barriers that prevented access due to construction. She got on the elevator with the patients to view the construction site. (24:57-26:15; 1:06:21-1:07:58) These areas were marked off and only staff with keys could gain access to the elevator.

When the Employer learned of these incidents, the Employer terminated her for failing to follow company policy as it related to the Code of Conduct and the Code of Ethics, specifically as each related to safety issues. (12:45-14:24; 15:00-15:10; 40:35-40:50; 1:00:53; Exhibits 7, 12-16)

## **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code Section 96.5(2)(a) (2013) provides:

*Discharge for Misconduct.* If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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 Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665, (Iowa 2000) (quoting *Reigelsberger v. Employment Appeal Board*, 500 N.W.2d 64, 66 (Iowa 1993)).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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 NW2d 661 (Iowa 2000).

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Employer's version of events. The Claimant knowingly upset the counselor-to-patient balance, which potentially placed the patients in jeopardy when she left only one resident counselor available to oversee 18 patients. The Employer provided unrefuted testimony that staff is continuously reminded in their bi-weekly meetings to make sure patients are well-covered using the policy guideline. And to make matters worse, she should have been reminded of her responsibility when Bruce responded 'no' when she asked it if was okay for her to leave him with the other 18 patients that day. The fact that she left without disclosing her departure demonstrates a blatant disregard for the Employer's interests, not to mention Ms. Haafke's primary responsibility, which was to ensure patient care and safety. The November 24<sup>th</sup> infraction was further exacerbated by the fact she also took a patient with her. Generally, patients don't leave the area unless they are being accompanied by a counselor to a doctor's appointment. Going to the ATM and retrieving mail does not fall into that category of a reason for the patient to leave. The Claimant's breaking protocol in this regard diminishes the professional relationship between that of a patient and a counselor when she takes off without anyone's knowledge and without permission as she did in this instance.

As for the November 25<sup>th</sup> infraction, Ms. Haafke again violated protocol by taking patients on what appeared to be a 'field trip' to areas that were clearly marked off limits to everyone. She bypassed the safety barriers that were in place to ensure the safety of personnel in the area. There was nothing in the record to support that the Claimant had any business-related need to be in the area, much less any reason as to why she would be escorting patients who also had no business there in the first place. Her behavior, again, was lacking in judgment and a direct contradiction to the standards of behavior the Employer had a right to expect of its recovery counselor in working with patients. The Claimant not only placed herself in harm's way, but could have potentially placed her patients in danger as well. Based on this record, we conclude that the Employer satisfied their burden of proof.

**DECISION:**

The administrative law judge's decision dated January 30, 2017 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for disqualifying misconduct. Accordingly, she is denied benefits until such time she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. See, Iowa Code section 96.5(2)"a".

The Employer submitted additional evidence to the Board which was not contained in the administrative file and which was not submitted to the administrative law judge. While the additional evidence was reviewed for the purposes of determining whether admission of the evidence was warranted despite it not being presented at hearing, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision. There is no sufficient cause why the new and additional information submitted by the Employer was not presented at hearing. Accordingly all the new and additional information submitted has not been relied upon in making our decision, and has received no weight whatsoever, but rather has been wholly disregarded.

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Kim D. Schmett

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Ashley R. Koopmans

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James M. Strohman

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