

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DENISE L OWENS
Claimant

APPEAL NO: 18A-UI-04493-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 03/18/18
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 9, 2018, 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 May 4, 2018. The claimant participated in the hearing. Markie McElvain, Administrator; Lori Pearson, DON; Amanda Rivera, Unemployment Claims Consultant; and Alyce Smolsky, Employer Representative; participated in the hearing on behalf of the employer. Employer's Exhibits One through Four were admitted into evidence.

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 assistant DON for Care Initiatives from September 16, 2014 to March 22, 2018. She was discharged for indicating she gave a resident medication that she did not actually give him.

The claimant received a verbal warning for attendance September 25, 2017; a written warning and performance improvement plan for attendance November 22, 2017; and received a final written warning December 19, 2017, because she was on call and did not answer calls from the facility as her phone had stopped working.

On March 17, 2018, a resident filed a grievance stating the claimant failed to give him his medication the previous evening. The employer was made aware of the grievance Monday, March 18, 2018, and began an investigation.

On March 16, 2018, the claimant, whose duties are usually administrative in nature, was working the floor and passing medication. The procedure for handling medication requires that after administering the medication, the nurse goes back to the computer screen, clicks on the next box, and enters her password stating she gave the medication to the resident. Before

talking Resident A's medication to him March 16, 2018, the claimant signed off on the box stating she gave the resident his medication. The claimant took Resident A's night time medication in to his room and he was on the phone. The pills were due at 8:00 p.m. but procedure allows for them to be administered an hour before or after that time. Resident A stated, "Don't you dare give me those before 8:00 p.m." The claimant returned to the medication cart, labeled the medication cup, and put it in a drawer in the cart. She returned to Resident A's room around 8:15 p.m. and he was in the restroom and stated she would need to come back. The claimant returned the medication to the drawer. The claimant went back to Resident A's room at 9:15 p.m. and he said he was not ready yet and the claimant took the medication back to the cart and told the nurse for the next shift, Resident A had not taken his night medication. The claimant then removed the medication from the cart and gave it to the next nurse. Resident A was asleep when the second nurse went to his room to give him his medication and consequently that nurse put the medications in the sharps container on the medication cart. The next day the resident told the social worker he did not receive his medication and a grievance was filed. When the employer learned of the situation Monday, March 18, 2018, it began an investigation and suspended the claimant for having a major type B violation. It notified the claimant March 22, 2018, that her employment was terminated for accumulating a major type B violation when on a final written warning. The claimant testified she did not remember signing that she gave the medication.

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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 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).

The claimant stated on the medication administration record that she gave the resident his night time medication March 16, 2018, but did not actually do so. Although the claimant made a significant error and does not take any responsibility for her actions, her behavior does not rise to the level of intentional job misconduct. While the claimant was on a final written warning, her previous warnings were not for performance issues but rather for attendance and failing to answer the phone when on-call because she did not realize her phone was not working.

Under these circumstances, the administrative law judge must conclude the employer has not established disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The April 9, 2018, 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/scn