

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIANA HESSE
Claimant

APPEAL NO. 16A-UI-07581-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**THE IA ODD FELLOWS AND ORPHANS HM
IOOF HOME & COMMUNITY THERAY CEN**
Employer

OC: 06/12/16
Claimant: Respondent (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The IA Odd Fellows and Orphans Home filed a timely appeal from a representative's decision dated July 1, 2016, reference 01, that held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on July 28, 2016. Although duly notified, the claimant did not respond to the notice of hearing and did not participate. The employer participated by Ms. Debra Haugen, Administrator. Witnesses available for but not testifying were Mr. Michael Davis and Ms. Cassidy Schmidt. Employer's Exhibits 1 through 13 were admitted into the hearing record.

ISSUE:

The issue is whether the claimant was discharged for misconduct in connection with her work.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Briana Hesse began employment with The IA Odd Fellows and Orphans Home on May 2, 2012. Ms. Hesse was initially employed as a certified nursing assistant but subsequently held the position of a certified medicine aide. As of July 1, 2015, Ms. Hesse's job position was that of a licensed practical nurse. Claimant was employed full time and was paid by the hour. Her immediate supervisor was Ms. Cassidy Schmidt, Director of Nursing.

The claimant was discharged on June 14, 2016 after she had signed out narcotics from the facility's medication narcotic area but did not document administering the narcotics to the resident on June 13, 2016. The claimant also left her work shift on June 13, 2016 prior to the end of the shift without authorization from the employer or notifying the charge nurse that she was leaving the facility or the reason for it. Ms. Hesse also did not do a narcotic count with a certified medication assistant who Ms. Hesse left to perform duties in her absence. The employer concluded that Ms. Hesse had engaged in neglect of duties and intentional substandard work performance and had risked the safety of residents because she had failed to dispense and properly document narcotic pain medications as required by company policy and law.

The employer concluded by interviewing family members and a resident who was lucid and can recall events, that Ms. Hesse did not dispense the pain medications to the resident and the narcotic pain medication is unaccounted for.

In December 2015, Ms. Hesse was specifically warned about the requirement that she accurately document and dispense narcotics to residents. When confronted about her failure to provide medications to the specific resident, Ms. Hesse identified the resident by name but provided no further explanation regarding the failure to properly document why the narcotic was not dispensed to the resident or what had happened to the narcotic pain medication that was signed out by Ms. Hesse but not administered to the resident. During the investigation the employer also determined Ms. Hesse had also previously left the facility prior to the end of her work shift without authorization placing residents at risk. The claimant was aware of the facility's requirements regarding the maintenance, documentation and the administration of narcotic drugs.

Because of what the employer reasonably concluded was the claimant's willful disregard of the employer's interests and standards of behavior as well as regulatory provisions of Iowa law, the claimant was terminated from employment. The basis for the claimant's termination from employment was reported to the Iowa Department of Inspections and Appeals. Criminal charges have been filed against Ms. Hesse and the claimant's conduct has been reported to the Iowa Board of Nursing.

REASONING AND CONCLUSIONS OF LAW:

The first question before the administrative law judge is whether the evidence in the record establishes intentional misconduct on the part of Ms. Hesse sufficient to warrant the denial of unemployment insurance benefits. It does.

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).

The evidence in the record establishes that the claimant was trained on licensing as a licensed practical nurse and had been previously warned by the employer regarding the proper procedures to be followed in having narcotics, documenting them, and administration of narcotic pain medications to residents. The evidence in the record establishes that the claimant willfully left her work shift on the evening of June 13, 2016 prior to the end of the shift without the authorization or knowledge of her employer without having sufficient coverage for the remainder of the shift. The evidence also establishes that the claimant signed out narcotic pain medications but did not administer or document the pain medications were provided to the designated resident. This conduct on the part of the claimant was in willful disregard of the employer's interests and reasonable standards of behavior that the employer had a right to expect of its employees under the provisions of the Iowa Employment Security Law and required by regulatory provisions of Iowa law as well.

There being no evidence to the contrary, the administrative law judge concludes that the employer has clearly sustained its burden of proof in establishing intentional conduct that would disqualify the claimant from the receipt of unemployment insurance benefits. Accordingly, the claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

The further issue to be decided is whether the claimant was discharged for gross misconduct in connection with her work. Iowa Code section 96.5-2 provides that 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 insured work equal to ten times the individual's weekly benefit amount, providing the individual is otherwise eligible.

If gross misconduct is established, the department shall cancel the individuals' wage credits earned, prior to the date of discharge from all employers.

Gross misconduct is deemed to have occurred after a claimant loses employment as a result of an act constituting an indictable offense in connection with the claimant's employment, provided the claimant is duly convicted thereof or has signed a statement admitting the commission of such an act. Determinations regarding a benefit claim may be redetermined within five years from the effective date of the claim. Any benefits paid to a claimant prior to a determination that the claimant has lost employment as a result of such act shall not be considered to have been accepted by the claimant in good faith.

In the case at hand, although Ms. Hesse has been charged with at least one felony and acts constituting indictable offenses, the claimant has not yet been found guilty of the charges and has not signed a statement admitting the commission of the acts. In the absence of an

admission by the claimant or conviction thereof, the administrative law judge concludes that the gross conduct provisions of the law are not, at this time, applicable. This determination regarding Ms. Hesse's benefit claim may be redetermined within five years of the effective date of the claim based upon new information or information that was not previously available. Any benefits the claimant has received prior to the determination she lost her employment as a result of gross misconduct will not be considered to have been received by the claimant in good faith.

As the evidence in the record, at this time, establishes intentional misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits, the claimant is disqualified for unemployment insurance benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and meets all other eligibility requirements of Iowa law.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. The administrative record reflects the claimant has not received unemployment insurance benefits since filing a claim with an effective date of June 12, 2016 and the employer's account is not chargeable for any benefits paid to the claimant.

DECISION:

The representative's decision dated July 1, 2016, reference 01, is reversed. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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