

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**SHEILA D CUMMINGS**

Claimant

**APPEAL NO: 18A-UI-07431-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HOLY SPIRIT RETIREMENT HOME**

Employer

**OC: 06/10/18**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the July 6, 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 July 27, 2018. The claimant participated in the hearing. Holly Choquette, Director of Nursing; Dorene Becker, Human Resources Manager; and Lisa Lowe, Interim 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 LPN for Holy Spirit Retirement Home from September 2, 2005 to June 8, 2018. She was discharged for failing to properly document narcotic record counts and electronic medication administration records (MAR).

Whenever an authorized employee removes a controlled medication that the employer counts the narcotic record count sheet and the MAR must be consistent. The claimant received a written warning March 1, 2018, for medication errors.

At the beginning of March 2018 the employer received a complaint from a resident's family about a new narcotic order for the resident. While investigating that situation the employer made the decision it needed to audit the claimant's documentation for January and February 2018. When it conducted the audit it discovered 15 errors in the narcotic record count and the electronic MAR. They were incomplete on multiple occasions, many entries were illegible, contained improper strikethroughs, inconsistent times given, and some medications were not on the electronic MAR. The employer determined the claimant's actions were the result of carelessness and issued her a written warning March 8, 2018. It reminded the claimant that the controlled medication records were monitored by the state and federal government and how important it was for the counts to be correct.

On June 7, 2018, the employer learned there was Xanax missing and conducted another audit. A resident was discharged and any type of controlled medication prescribed to a discharged resident must be destroyed at the facility. The records indicated the claimant and another nurse properly destroyed Tramadol but there was no record of destruction for the Xanax. DON Holly Choquette found empty blister packs of Xanax without a log of destruction and she looked at the narcotic counts again. She looked for anything recent that was supposed to be destroyed but there were not any. She then reviewed May and June 2018. She did not document every medication error but found several inconsistencies and multiple medication errors. Many medications were still in blister packs but it is difficult to tell who is responsible for failing to give those medications to patients because there are three shifts that work off each medication cart. Ms. Choquette audited six resident's narcotic medication records from May 1 through June 8, 2018, and found 36 inconsistencies/errors between the electronic MAR and the narcotic paper count and 18 documented transcription issues. When a nurse documents a PRN medication she needs to enter a progress note on the resident's chart and the claimant was not completing progress notes stating why the medication was given. Ms. Choquette also found 44 Xanax missing. The medication was listed on the return sheet of the resident who was discharged but not on the destroyed sheet which as a controlled medication Xanax is required to be destroyed at the facility. The claimant did follow the correct destroy procedure with another nurse with the resident's Tramadol.

The claimant attended an in-service training on the electronic MAR procedure and signed that she understood the medication administration of controlled medications.

After the audit on June 7, 2018, the employer made the decision to terminate the claimant's employment June 8, 2018. Typically the employer follows a progressive disciplinary policy of verbal warning, written warning, written warning with suspension and termination. It does not have to issue a written warning with suspension but did so in this case due to the severity of the violations.

#### **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 employer documented 15 MAR errors made by the claimant in the March 2018 audit covering January 22 through February 27, 2018. That is a large number of errors attributable to the claimant and the employer chose to issue the claimant a written warning at that time. The employer testified the claimant showed improvement in April 2018 but it found additional issues during the June 7, 2018, audit of May 1 through June 7, 2018. While the errors cited by the employer were serious, the employer could not attribute all of the errors to the claimant, or even provide the exact number of errors the claimant made because at least two other employees used the same medication cart as the claimant each day. Because the employer cannot say with certainty the claimant was responsible for those errors, or even how many she was responsible for, the administrative law judge must conclude the employer has not met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

**DECISION:**

The July 6, 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.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/rvs