

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RYAN M ELSON**

Claimant

**APPEAL NO. 10A-UI-09707-D**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEARTLAND EMPLOYMENT SVCS LLC**

Employer

**OC: 05/23/10**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Ryan M. Elson (claimant) appealed a representative's July 2, 2010 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Heartland Employment Services, L.L.C. (employer). After hearing notices were mailed to the parties' last known addresses of record, an in-person hearing was held on August 18, 2010. The claimant participated in the hearing. Holly Benedict appeared on the employer's behalf and presented testimony from one other witness, Tim Bianchi. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on February 25, 2009. He worked full-time as a licensed practical nurse (LPN) at the employer's West Des Moines, Iowa, long-term care nursing facility. His last day of work was May 20, 2010. The employer suspended him on that day and discharged him on June 3, 2010. The stated reason for the discharge was not responding to a patient's needs and not following proper medication sign-out procedure.

On May 20 the claimant had come on shift at 6:00 a.m., and at about 7:30 a.m. was making rounds with the medication cart. He was gathering and preparing the medications for one patient when a certified nursing aide (CNA) came to him and reported that the patient who was awaiting medications needed to have her tracheotomy tube suctioned. He asked the CNA if it was an emergency, because he was preparing the medications. The CNA responded that she did not know; CNAs are not trained to make condition assessments of residents. The CNA therefore went to another nurse and reported the situation; that other nurse then immediately went to the resident's room and suctioned the tube, so as to be certain and to assure the resident that there was no airway obstruction.

The claimant then entered the resident's room and began to administer her medications. One medication was a pain medication, a non-controlled substance, which was administered through a skin patch. However, the medications chart showed that the patch was to be administered in the evening, not the morning. The resident was sufficiently cognitive to recognize that he was preparing to administer the patch at the wrong time, so it was not administered. However, he had already signed out on the medications' chart that he had administered the patch, so he had to go back and make a correction to the chart. The standard protocol is that the chart is to be notated that a medication has been administered only after the fact of the administration, not at the time the medication is pulled and prepared for administration.

The claimant had previously been counseled for a minor medications error on August 24, 2009. He had been given a written coaching on January 15, 2010 for not properly responding to a request for assistance from another employee to assist in a resident's bathroom needs. The determination for discharge as a result of the May 20 incident was primarily due to the seriousness of the claimant's failure to promptly and properly respond to the potential emergency situation of a possible airway obstruction of the resident's tracheotomy tube.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's failure to promptly and properly respond to the potential emergency situation on May 20, particularly after the prior coaching, shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative's July 2, 2010 decision (reference 02) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of May 20, 2010. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

---

Lynette A. F. Donner  
Administrative Law Judge

---

Decision Dated and Mailed

ld/kjw