

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHARON A GERDEMANN
Claimant

APPEAL NO: 14A-UI-12805-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FINLEY HOSPITAL
Employer

OC: 11/09/14

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Sharon A. Gerdemann (claimant) appealed a representative's December 5, 2014 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Finley Hospital (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 9, 2015. The claimant participated in the hearing. Sarah Dickey appeared on the employer's behalf and presented testimony from one other witness, Jan Pacholke. 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?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on July 29, 1974. She worked full time as registered nurse. Her last day of work was November 5, 2014. The employer discharged her on that date. The reason asserted for the discharge was a pattern of carelessness.

On October 30, 2014 the claimant was working a shift in the geriatric psychiatric ward. The charge nurse gave her a medication cup containing two pills, a calcium supplement and another vitamin, to give to the patient who was in a chair about three feet away. The claimant began to do so, but then an alarm went off in the next room of a patient who was a fall risk. The charge nurse then told the claimant to go to assist the patient who was on alarm, so the claimant gave the medication cup to the patient in the chair and went to attend to the alarm. The patient then set the medication cup on the tray in front of her.

When the claimant returned, she realized that the patient would not be able to swallow the pills, so she took them to the medications room to crush them, and then obtained some applesauce into which she mixed the crushed pills. From the time the charge nurse gave the medication to the claimant to the time the patient consumed the medication was about 15 minutes. The only time the medication was not within the claimant's observation and control was the time she was away attending to the alarm, during which time the medication was within the charge nurse's observation. The employer provided hearsay testimony from a technician suggesting that the medication had been unattended for 30 minutes, including time after the claimant attended to the alarm.

The claimant had been given a warning on March 4, 2014 for an incident where a patient being discharged was initially given the wrong medication. The claimant had started the discharge process but had not yet completed the medication verification before she was called away; before she returned the patient pointed out that the medication was the incorrect medication. The claimant had also been given a warning on April 11, 2013 for failing to properly identify the correct patient to get an IV, resulting in the wrong patient getting the IV.

Because the employer concluded that the October 30, 2014 incident demonstrated a pattern of carelessness, it discharged the claimant.

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). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

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 which was a material breach of the duties and obligations owed by the employee to the employer. Rule 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 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. Rule 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The gravity of the incident and the number of prior violations or prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

The reason cited by the employer for discharging the claimant is the incident on October 30, 2014 of briefly leaving the medication unattended after the incidents in March 2014 and April 2013 involving providing incorrect medication. Under the circumstances of this case, the claimant's brief stepping away from the patient with the medication on October 30, at the direction of the charge nurse and when the patient was still within the sight of the charge nurse, was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's December 5, 2014 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css