

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LACEY D HIKE

Claimant

APPEAL NO. 09A-UI-08807-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCOTTISH RITE PARK INC

Employer

OC: 05/10/09

Claimant: Appellant (1)

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 10, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 8, 2009. Claimant participated. Claimant was represented by Amanda McDanel, attorney at law. Employer participated by Kim Gahan, director of nursing; Melissa Eddy, nurse, and Robert Schulte, human resources manager. The employer was represented by Joe Thorton, attorney at law. The record consists of the testimony of Kim Gahan; the testimony of Melissa Eddy; the testimony of Robert Schulte; the testimony of Lacey Hike; Claimant's Exhibits A-E; and Employer's Exhibits 1-10.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer in this case is a continuing care retirement community. Part of this facility is a nursing home and the claimant worked as a registered nurse. The claimant was terminated on May 7, 2009, for giving medication to a resident without a doctor's order.

The incident that led to the claimant's termination occurred on May 6, 2009. Michelle Diw, a licensed practical nurse, reported to the director of nursing, Kim Gahan, that the claimant said she had given a resident an extra dose of a stool softener. The resident in question had a physician's order that she be given a stool softener in the morning and the evening. There was no order, however, that a stool softener be given as needed. Ms. Gahan conducted an investigation and found that the scheduled morning dose had been given but the evening dose had not been given. A spare dose was given. Ms. Gahan also spoke to Melissa Eddy, another licensed practical nurse, and Ms. Eddy confirmed that the claimant had said she had given the resident an extra dose.

Prior to this incident the claimant had had a written warning concerning medication. An audit had been done of the medications cart and the nurse consultant who performed the audit found that the claimant had pre-set her medications. Pre-setting of medications is prohibited by nursing standards and the claimant was told that her next infraction would lead either to suspension or termination depending on the severity of the infraction.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

871 IAC 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.

Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer or in repeated acts of carelessness or negligence. The employer in this case, a nursing home, had a clear interest in providing safe and skilled nursing care to its residents. The proper dispensing of medication is an integral part of that care. The evidence in this case established that the claimant materially breached her duty to the employer by giving a resident medication that a physician did not order.

Although the claimant denied that she gave an extra dose of stool softener to the resident, the investigation established that the claimant either failed to give the evening dose or gave the claimant an extra dose. The director of nursing explained that the pills were packaged in such a way that the claimant could not have mistakenly given the resident the wrong pill. Two witnesses confirmed that the claimant said she had given the resident an extra dose. Since

there was no doctor's order that this resident could be given a stool softener as needed, the claimant violated the patient's care plan and the policy of the facility. She knew from her previous warning about pre-setting medication that the employer would discharge her for the next infraction if that infraction was serious.

The employer could reasonably expect that the claimant, a registered nurse, would follow the proper policies concerning medication. The claimant committed repeated acts of negligence or carelessness on medication and therefore, misconduct has been established. Benefits are denied.

DECISION:

The decision of the representative dated June 10, 2009, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs