

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSHUA J AYDELOTTE
Claimant

APPEAL NO. 12A-UI-04361-A

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY MEDICAL CENTER
Employer

OC: 03/18/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Joshua J. Aydelotte filed a timely appeal from an unemployment insurance decision dated April 12, 2012, reference 01, that disqualified him for benefits. After due notice was issued, a hearing was held in Cedar Rapids, Iowa on May 14, 2012 with Mr. Aydelotte participating and being represented by Scott McLeod, Attorney at Law. The employer, Mercy Medical Center, did not respond when paged at the time of the hearing and again prior to the closing of the record.

ISSUE:

Was the claimant discharged for misconduct in connection with the employment?

FINDINGS OF FACT:

Joshua J. Aydelotte was a registered nurse for Mercy Medical Center from March 7, 2011 until he was discharged March 21, 2012. The final incident leading to discharge occurred because Mr. Aydelotte mistook a two milliliter vial of Fentanyl for a one milliliter vial. Inadvertently, he failed to draw all of the Fentanyl into the syringe. Leaving one milliliter in the vial, he disposed of the vial in the Sharps container. He should have drawn both milliliters into the syringe discharging the excess from the syringe into the Sharps container. Mr. Aydelotte had received two prior warnings during his employment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. It does not.

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.

The employer has the burden of proof. See Iowa Code section 96.6-2. As noted above, the employer did not participate in the hearing. The claimant's testimony establishes that the final incident was an inadvertent error, not a deliberate act or a negligent act. Under these circumstances, no disqualification may be imposed.

DECISION:

The unemployment insurance decision dated April 12, 2012, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs