

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BETHANN CLAYBOURN**  
Claimant

**ASIC**  
Employer

**APPEAL 17A-UI-12991-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/30/17**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the December 7, 2017 (reference 03) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for wanton carelessness. The parties were properly notified of the hearing. A telephone hearing was held on January 26, 2018. The claimant, Bethann Claybourn, participated. The employer, ASIC, participated through Derik Shields, Chief Executive Officer; and Kimberly Shields, Chief Financial Officer. Employer's Exhibits 1 through 4 were received and admitted into the record without objection.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a direct care staff, from May 25, 2017, until October 10, 2017, when she was discharged. On the morning of October 9, claimant made errors when administering medications to a client. The client had four medications to take that morning. Claimant gave the client a double-dose of one of the four medications, and she failed to administer another two of the four medications. The employer discovered this around 11:00 p.m., when the new shift's employees were doing their medication count and found the error. The employee who discovered the error reported it to Shields, who discharged claimant the following day.

Claimant had been warned for making errors in administering medications multiple times in the past. She was warned five times between July and October 2017. Most recently, claimant was warned on October 4, 2017. Claimant was aware that her job was in jeopardy if these issues persisted. The employer maintains that claimant was capable of performing her job successfully. Shields testified that claimant worked for the employer for approximately two months before having any issues with dispensing medications. Claimant received training on medication administration at the outset of employment, and she received additional training from Ms. Shields after she requested it.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

Iowa Code § 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.

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 Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the

absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, claimant made repeated errors in administering medications to clients. These errors placed the health and well-being of clients in jeopardy. Claimant's repeated failure to accurately perform her job duties after having been warned is evidence of negligence or carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. See Iowa Admin. Code r. 871-24.32(1)a. The employer has established that claimant was discharged for disqualifying misconduct, and benefits are withheld.

**DECISION:**

The December 7, 2017 (reference 03) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

lj/rvs