

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JESSICA L GOODVIN**  
Claimant

**APPEAL NO. 13A-UI-11678-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FIVE STAR QUALITY CARE INC**  
Employer

**OC: 09/08/13**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Five Star Quality Care (employer) appealed a representative's October 9, 2013, decision (reference 04) that concluded Jessica Goodvin (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 8, 2013. The claimant participated personally. The employer participated by Amy Bushong, Human Resources Manager.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired April 19, 2012, as an as-needed registered nurse. On August 31, 2012, the claimant became a full-time registered nurse. The claimant received the employer's handbook on April 17, 2012. The employer issued the claimant warnings for medication errors on January 3, 2013, June 20, 2013, and July 2, 2013.

A new patient was admitted in August 2013. The employer did not have the medication that the patient needed. The pharmacy overlooked the medication. The director of nursing did not notice it on the medical administration record. The night shift nurse did not double check the records. On September 1, 2013, the claimant worked her shift and noticed the patient did not have the proper medication. She looked for the medication, left messages for nurses on previous shifts, and waited for return calls. They did not return her calls. She searched for the correct pharmacy and then for the on-call pharmacy. She called the assistant director of nursing to report the problem and indicate the administration of the patient's medication was delayed. The assistant director of nursing gave the claimant the number for the on-call pharmacy.

The claimant called the on-call pharmacist and the on-call pharmacist's wife answered. The pharmacist was not available but the claimant was assured he would call her back. The

claimant waited for the pharmacist to call her back. When he did, the pharmacist told the claimant he would have to travel to the pharmacy. The claimant waited for the pharmacist to call her from the pharmacy. The pharmacist called the claimant from the pharmacy and confirmed that the medication had not been filled. The claimant waited while the pharmacist filled the medication and delivered it to the claimant. The claimant administered the medication to the patient. The director of nursing terminated the claimant on September 9, 2013, for delivering the patient's medication three to four hours late.

The claimant filed for unemployment insurance benefits with an effective date of September 8, 2013. The employer, nor its representative, was on the telephone at the fact-finding interview on October 8, 2013. The representative submitted documents to the fact finder.

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

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's October 9, 2013, decision (reference 04) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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