

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

FREDERICK LOMBARD
1121 SECOND ST
TIPTON IA 52722

JERRY NICHOLLS JARED POWELL
PLEASANT CARE LLP
GREENWOOD MANOR
605 GREENWOOD DR
IOWA CITY IA 52246

Appeal Number: 05A-UI-05651-E
OC: 05-08-05 R: 03
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 20, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held in Cedar Rapids, Iowa, before Administrative Law Judge Julie Elder on July 20, 2005. The claimant participated in the hearing with wife, Alice. Roger Holdeman, Administrator, and Lynne Holdeman, Director of Nursing, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time medication aide for Greenwood Manor from July 26, 2004 to May 2, 2005. On April 30, 2005, the employer conducted its end of the month medication changeover and found two dosages of a patient's dilantin had not been given by the claimant April 19 and 20, 2005 (Employer's Exhibit One). The claimant believes that the medication was skipped by someone else earlier and that he simply picked up from where that person left off, although he could not explain why, under that theory, he did not continue following through and give the dilantin to the patient April 19 and 20, 2005. The claimant received a written warning December 27, 2004, for leaving a patient alone with a housekeeping staff member after entering the patient's room and turning off an alarm. Director of Nursing Lynne Holdeman wrote the claimant a note February 15, 2005, after receiving complaints that he had been raising his voice. The note indicated that if Ms. Holdeman would hear him yelling, she would have "no options but to let you go." The employer terminated the claimant's employment May 2, 2005, for the April 19 and 20, 2005, failure to give the medication.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). While the administrative law judge finds the claimant failed to give the dilantin to the patient April 19 or 20, 2005, and that this was a serious and potentially harmful omission, it was an isolated and unintentional incident, and consequently does not rise to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The May 20, 2005, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/kjw