

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAREN J BOWEN
Claimant

APPEAL NO. 11A-UI-09743-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 06/19/11
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's July 13, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant participated in the hearing. David Williams, a TALX representative, appeared on the employer's behalf. Doria Brenicke, the administrator, and Joann Wagner, the director of nursing, testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in May 2010. The claimant worked at another facility until March 18, 2011, when she transferred to Brenicke's facility. She worked as a full-time LPN charge nurse for the employer

The claimant discovered the employer had different policies and procedures from the first facility she worked at for the employer. The employer gave the claimant a verbal warning on April 22, 2011, for failing to follow the employer's medication policy and procedure. The claimant received the verbal warning because she did what she had done at the first facility instead of following the employer's policy and procedure. The two policies were different.

The weekend of June 18, 2011, the claimant worked with and trained a new LPN, S.K. The employer received a report from S.K. that the claimant gave a resident a vitamin at supper time instead of at bedtime, the claimant did not check to make sure correct medications were given to residents, the claimant did not change a catheter, the claimant did not report problems with the catheter at a shift change, and the claimant gave a resident medication while the resident was raised in a lift. Based on S.K.'s report, the employer concluded the claimant performed her job duties improperly and put residents at risk.

The medication the claimant gave a resident at supper time was a vitamin. The prescription indicated the resident was to receive a vitamin two times a day. Giving the resident the vitamin a few hours earlier than the resident's bedtime did not adversely affect the resident. When the claimant and S.K. checked another resident's catheter, it did not flush. The claimant adjusted and repositioned the catheter. After noticing when the catheter had been changed and urine had been collected, the claimant asked S.K. if she thought they needed to change the catheter. The claimant understood they both decided the catheter did not need to be changed then because the claimant had repositioned it, but the night nurse should check on it. Although S.K. reported the claimant did not inform the next shift about any problems with the catheter, the claimant reported the catheter situation to the night shift nurse. A nurse on the night shift changed the catheter.

The claimant gave a resident some medication while the resident was in a lift raised over soiled bed linen. Since the resident was trying to loosen the straps of the lift, which could have resulted in the resident falling, the claimant decided it was more important to give the resident medication to calm down the resident than to change the bed linen first and give the resident medication after the resident was back in the bed.

Initially, the employer informed the claimant she was discharged because she falsified a report. The employer dropped this allegation after the claimant showed the employer she had circled her signature or initials that she had not applied lotion to a resident because the resident had on too much lotion. The employer ultimately discharged the claimant on June 22 for failing to follow the employer's procedures and putting residents at risk. The claimant did not believe the employer trained her on the employer's specific procedures. She performed her job to the best of her ability.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Since S.K. did not testify at the hearing, the claimant's testimony as to what happened and what was said the weekend of June 18 must be given more weight than the employer's reliance on information from S.K., who did not participate in the hearing. The evidence presented at the hearing does not establish that the claimant intentionally disregarded the employer's policies

and procedures or that she performed her job in such a way that she jeopardized any resident's safety. The claimant may have used poor judgment when she gave medication to a resident in a lift, but she concluded the resident's safety was more important than where she gave the resident the medication. The claimant may not have exactly followed the employer's procedures, but she performed her work to the best of her ability. The evidence does not establish that the claimant committed work-connected misconduct. Therefore, as of June 19, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's July 13, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit work-connected misconduct. As of June 19, 2011, the claimant is qualified to receive benefits. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw