

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TANYA L JORDAN
Claimant

CARE INITIATIVES
Employer

APPEAL 24A-UI-04688-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/14/24
Claimant: Appellant (2)**

Iowa Code §96.5(2)a-Discharge/Misconduct

STATEMENT OF THE CASE:

On May 15, 2024, the claimant/appellant filed an appeal from the May 8, 2024, (reference 01) unemployment insurance decision that denied benefits based the claimant voluntarily quitting on April 15, 2024 for dishonesty in connection with you work. The parties were properly notified about the hearing. A telephone hearing was originally scheduled to be held on May 31, 2024. Due to exhibit issues the hearing was postponed. After due notice the hearing was held on June 18, 2024. The claimant participated. The employer participated through hearing representative, Amelia Gallagher, and administrator, Kristine Tomash. Administrative notice was taken of claimant's unemployment insurance benefits records. The Claimant's Exhibits A, B, C, D, E, and F were admitted into the record. The Employer's Exhibits 1 and 2 were admitted into the record.

ISSUES:

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for employer on February 23, 2024. The claimant last worked as a full-time charge nurse at the employer's long term care facility.

The charge nurse is responsible for administering PRN narcotics to residents. These narcotics are administered to the residents only when the resident requests them or when the charge nurse can see visible signs that the resident is experiencing pain. Before the claimant will administer the narcotics she checks the paper medication log to see the last time a resident received them and also checks the electronic medication log to see if the resident is allowed to receive the medication. When the claimant administers the narcotics she records it on the paper copy of the medication record and the electronic medication record. The claimant then goes back to check on the resident to see if the medication was effective in relieving the

resident's pain. Before and at the end of each shift the charge nurse going off duty and the charge nurse going on duty count the pills to ensure the counts are correct.

Lori Hazen babysits for the claimant. On April 10, 2024, Ms. Hazen sent the following message to the claimant:

"I'm scared of what I'm capable of doing to get rid of my anxiety. I even cry a lot now and I rarely cry about anything. I'm not threatening you or trying to piss you off because I consider you a good friend but I'm backed into a corner. Please help me." (Exhibit C).

On April 12, 2024, Ms. Hazen sent the following message:

"Ok, I think we're done here. I can't babysit anymore. I expect you to pay me the bulk of what you owe me within 30 days. I can't believe you don't have \$60 to give me. I'm totally upset and angry right now with you and myself for believing when you promised to pay me back before now. I guess I'll ask Lucas for it. I'm broke because I thought I'd have most of that money back. I'm gonna have to tell Charlie what I did. You make almost \$50 an hour and you can't even spare \$60 so I can have health insurance. I don't think you understand what this is doing to me mentally I'm done." (Exhibit D).

Ms. Hazen sent another message stating:

"Just wanted you to know that I haven't deleted any of my messages since January. Since you won't help me out with \$60 I have no choice but to share my messages with your administrator." (Exhibit D).

On April 15, 2024 the employer received a tip from Lori Hazen that the claimant was misappropriating medications that belong to residents. The employer began their investigation into the allegation by having their corporate nursing personnel do a narcotic count, interviewing residents, examining narcotic administration records and looking at logs on when medications were destroyed. The investigation did not include interviewing the claimant.

The investigation determined that there were four cases where the residents verbalized they did not request or receive the narcotics they were alleged to have received on February 28, 2024, March 27, 2024, April 4, 2024, and April 6, 2024 even though they were signed out by the claimant. The employer also determined that not all of the PRN narcotic medications were signed out on the electronic medication record. The employer is unaware how many pills were actually misappropriated. No one observed the claimant take the pills. The employer determined that the claimant misappropriated them because it occurred on her shift on the side of the hall that she was responsible for caring for. Additionally, the employer determined the residents accounts were reliable based on having a high BIM score, meaning they did not have cognitive impairment. The claimant denies misappropriating the narcotics.

The claimant was discharged on April 15, 2024, for violating the employer's theft of a resident policy when the employer determined that the claimant misappropriated the narcotics. The claimant was aware of the employer's theft policy. The claimant did not have any prior verbal or written warnings.

Ms. Hazen subsequently sent a message to Ms. Tomash stating:

"I would like to retract the allegation I made against Tanya Jordan. It was a mistake on my part. I apologize for any inconvenience this may ha(ve) caused. Thank you, Lori" (Exhibit A).

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 and d provide:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

d. For the purposes of this subsection, "*misconduct*" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

(1) Material falsification of the individual's employment application.

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

(3) Intentional damage of an employer's property.

(4) Consumption of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in a manner not directed by the manufacturer or a combination of such substances, on the employer's premises in violation of the employer's employment policies.

(5) Reporting to work under the influence of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in an off-label manner, or a combination of such substances, on the employer's premises in violation of the employer's employment policies, unless the individual is compelled to work by the employer outside of scheduled or on-call working hours.

- (6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.
- (7) Incarceration for an act for which one could reasonably expect to be incarcerated that result in missing work.
- (8) Incarceration as a result of a misdemeanor or felony conviction by a court of competent jurisdiction.
- (9) Excessive unexcused tardiness or absenteeism.
- (10) Falsification of any work-related report, task, or job that could expose the employer or coworkers to legal liability or sanction for violation of health or safety laws.
- (11) Failure to maintain any licenses, registration, or certification that is reasonably required by the employer or by law, or that is a functional requirement to perform the individual's regular job duties, unless the failure is not within the control of the individual.
- (12) Conduct that is libelous or slanderous toward an employer or an employee of the employer if such conduct is not protected under state or federal law.
- (13) Theft of an employer or coworker's funds or property.
- (14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

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.

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or

disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). 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). "Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

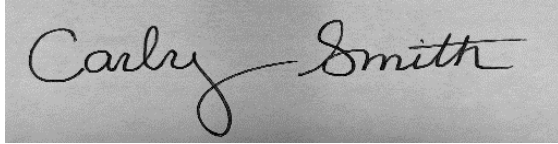
In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy. However, if the employer fails to meet its burden of proof to establish job related misconduct as the reason for the separation it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

In this case the evidence shows that a disgruntled babysitter contacted the employer on April 15, 2024 and alleged the claimant misappropriated medications. The employer conducted an investigation into the matter and based on four long term care resident's recollections, discharged the claimant for misappropriation of medication. The residents did not recall requesting or receiving the PRN narcotic medication. In at least two of the instances the residents were asked to recall medications that would have been taken a month and a half prior to the allegation. Additionally, the disgruntled babysitter retracted her allegation against the claimant.

The administrative law judge finds the employer did not provide evidence clearly establishing the claimant took the medication. As a result, the employer has not met its burden of proof establishing that the claimant in fact misappropriated the PRN narcotics and committed theft of a resident's property. Accordingly, no disqualification is imposed. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The May 8, 2024 (reference 01) unemployment insurance decision is REVERSED. The claimant was discharged from employment on April 15, 2024, for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

A handwritten signature in black ink that reads "Carly Smith". The signature is written in a cursive, flowing style. The "C" is large and loops around the "arly". The "Smith" is written in a more standard cursive. The signature is on a light-colored, slightly textured background.

Carly Smith
Administrative Law Judge

June 19, 2024
Decision Dated and Mailed

cs/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.