

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

LYLE E ERICKSON
320 – 2ND ST NE
ORANGE CITY IA 51040

GOOD SAMARITAN SOCIETY INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-08428-HT
OC: 07/17/05 R: 01
Claimant: Respondent (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
Section 95.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Good Samaritan, filed an appeal from a decision dated August 8, 2005, reference 02. The decision allowed benefits to the claimant, Lyle Erickson. After due notice was issued a hearing was held by telephone conference call on August 31, 2005. The claimant participated on his own behalf. The employer participated by Director of Nursing Julie Fedders.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Lyle Erickson was employed by Good Samaritan

February 28 until July 13, 2005. He was a part-time licensed practical nurse. At the time of hire the claimant received a copy of the employee handbook.

On July 13, 2005, Director of Nursing Julie Fedders received information from a certified nursing assistant (CNA) , who was also a second-year nursing student, that Mr. Erickson had allowed her to give an insulin injection to one of the residents. Although she may have been a nursing student, this individual was not yet a nurse and therefore not authorized to give injections to residents. Ms. Fedders questioned Mr. Erickson and he admitted he had filled the syringe and given it to the CNA to administer. He said when he was a nursing student he had been allowed by a nurse to give an injection to a patient and he was doing the same for this student. Her enthusiasm for school had been waning and he wanted to help her.

For a CNA to administer an injection is outside the scope of their authority, and a nurse is not authorized to allow an uncertified person to administer injections, even with supervision. The employer had to report the incident to the State of Iowa as potential abuse issue and could have resulted in the facility losing its Medicare authorization, a possible loss of nearly half its income. In addition, the claimant's actions were considered to come under the gross misconduct as it could potentially "endanger a co-worker, resident, client or visitor." Also, it was contrary to the code of ethics which requires employees to protect against conduct which might endanger residents.

Ms. Fedders notified the claimant he was discharged after the meeting on July 13, 2005.

Lyle Erickson has received unemployment benefits since filing a claim with an effective date of July 17, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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 claimant acknowledged he knew the CNA, although a nursing student, was not at that time qualified to give injections to residents. While his motive might have been to encourage the CNA in her studies, it was still reckless and contrary not only to his professional code of conduct but the employer's policies and procedures. It had the potential to endanger not only the resident but the employer's licensing and certifications. It was a reckless disregard for the employer's best interests and constitutes substantial job-related misconduct. He is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of August 8, 2005, reference 02, is reversed. Lyle Erickson is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$1,200.00.

bgh/pjs