

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

KIM J BRICKER

Claimant

and

MONROE COUNTY HOSPITAL

Employer

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HEARING NUMBER: 15B-UI-02762

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-A

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant, Kim J. Bricker, worked for Monroe County Hospital as a full-time registered nurse from November 13, 2014 through February 11, 2015. (6:20-6:36; 39:24-39:38) Rhonda Tisue was her immediate supervisor. On the Claimant's 3rd day on her own (January 2, 2015), the Claimant was assigned a patient having a rare seizure disorder. (45:42-46:46:06) The child was in her care for a couple of hours before Kim took any seizure precautions. (47:44-48:16) The Claimant did not immediately take these precautions because she hadn't worked in the Med-Surge area (48:08-48:15), which normally saw older patients. (46:55-47:05; 47:49-47:57) When Chief Nursing Officer Gale Herrera observed the lack of seizure protocols, she directed another nurse to help put them in place. (53:20-53:50)

There was a miscommunication involving the child's medications because the parents indicated that the child had been weaned off of one (49:53-50:17), and never took another medication. Kim did not administer some of the medications listed because the parents also indicated that the child had already taken

them earlier in the day, and the child was currently vomiting. (50:24-50:40) In the process of checking this information out, Gale thought the Claimant, mistakenly, brought in the medication that the child was no longer taking. Gale never reprimanded her about this matter or informed her that the patient's mother complained about her care.

On January 14, 2015, the Claimant got a late patient whom she was required to administer Lasix. (42:10) The Claimant hadn't gotten around to distributing meds to her assigned patients yet. (42:20) Kim commented that the Lasix was going to keep the patient up all night with frequent urination. (42:46-42:58) The senior nurse explained that the patient was in congestive heart failure and it was more important to get the fluid off than be concerned with the patient being up all night, which the Claimant acknowledged and agreed. (41:43-41:56) Kim indicated she would administer the Lasix prior to the end of her shift at 7:30 p.m. (42:24-42:45)

On January 26, 2015, one of the CNA was upset with Kim and complained about her to Rhonda Tisue, the manager, behind closed doors. (22:12-23:00) Kim heard the CNA, who had a loud voice, from the hallway saying "I want to knock her head off!" (58:32-58:45) Kim had heard this CNA say this to her the day before. Kim stopped, listened briefly while outside the door (25:29-25:56; 59:18-59:40), and then continued with her work charting on the computer at the nurse's station. (1:02:06-1:02:38) Another employee told Rhonda that she saw the Claimant outside the door listening at their conversation. The next day, Kim saw Rhonda and questioned her about 'what was going on' to which Rhonda told her to ask the CNA. (24:00-24:09) The Claimant later texted Rhonda, indicated that she was standing in the hall at the door, but did not spend time listening to their conversation. (1:01:35-1:02:06)

Rhonda then went on vacation from January 30th February 8th, 2015, during which time the Employer conducted an investigation. (33:25-33:38; 34:10-34:23) When Rhonda returned, the Employer terminated Kim (33:39-33:42) for her lack of critical thinking skills, inability to work with other team members, basic lack of trust for listening outside the door. (35:09-36:00; 39:48-40:10)

The Claimant never received any written warnings during her employment, as she was still in her probationary period (37:00-37:13; 41:36-41:44; 48:00-45:06; 45:20-45:32), nor was she ever told that her co-workers made complaints about her. (1:02:43-1:03:10)

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2013) provides:

Discharge for Misconduct. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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 Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665, (Iowa 2000) (quoting Reigelsberger v. Employment Appeal Board, 500 N.W.2d 64, 66 (Iowa 1993)).

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 substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 NW2d 661 (Iowa 2000).

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Claimant's version of events. Although the Employer argued that the Claimant was given several verbal warnings about her job performance, Kim denied receiving warnings for either incident that led to her termination. In addition, the Employeyr failed to provide any corroborating evidence, i.e., written documentation to support their claim. (41:36-41:44; 48:00-45:06; 45:20-45:32)

Kim acknowledged that her delay in getting the seizure precautions in place was the result of her inexperience of having to see a patient, alone, that day. However, she maintained that the alleged medication miscommunication was not due to error on her part. Rather, she took in the information from the parents as to what medications the child had already taken for the day in order to determine what medications still needed to be administered, if any. The Claimant did not bring any medication that was unnecessarily intended to be in the room, which the supervising nurse misunderstood. What the Employer perceived as letting the parents dictate protocol was not an intentional disregard of the Employer's interests. Rather, the Claimant's seemingly reliant posture on the parents' information was not unreasonable given the fact that the child was vomiting, off and on, at the time, and the Claimant was trying to get the information necessary to make her assessment.

The Claimant denied that she refused to give the Lasix medication to the patient on January 14th. She merely noted the effects of the medication on the patient and expressed her intention to administer the medication prior to the end of her shift.

As for the allegation that she was eavesdropping outside the door when a co-worker was complaining about her, Kim provided credible testimony that her reaction to hearing a loud voice making familiar statements naturally grabbed her attention. If she intended to act sneakily, as the Employer so believed, Kim would not have approached the Employer the following day to inquire about that conversation. At worst, the Claimant may have used poor judgement in how she handled the three incidents for which the Employer based their decision to terminate her. However, in viewing this record as a whole, we conclude that each incident taken alone, and taken together does not rise to the legal definition of misconduct such that she should be denied benefits.

DECISION:

The administrative law judge's decision dated April 13, 2015 is **REVERSED**. The Employment Appeal Board concludes that the claimant was discharged for no disqualifying reason. Accordingly, she is allowed benefits provided she is otherwise eligible.

The Employer submitted a written argument to the Employment Appeal Board. The Employment Appeal Board reviewed the argument. A portion of the argument consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law judge. While the argument and additional evidence were considered, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

AMG/fnv