

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN A LEE
Claimant

APPEAL NO. 14A-UI-01985-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

PINNACLE HEALTH FACILITIES XVII L
Employer

OC: 01/26/14
Claimant: Respondent (2)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated February 13, 2014, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on March 13, 2013, by telephone conference call. The claimant failed to respond to the hearing notice and did not participate. The employer participated by Kristine Erickson, Director of Nursing. The record consists of the testimony of Kristine Erickson and Employer's Exhibits 1-7. Official notice is taken of agency records.

ISSUES:

Whether the claimant was discharged for misconduct;

Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a long-term care facility located in Altoona, Iowa. The claimant was hired on October 15, 2003. He was a full-time licensed practical nurse. His last day of work was January 14, 2014. He was terminated on January 15, 2014.

The incident that led to the claimant's termination occurred on January 13, 2014. He gave a patient the wrong dosage of insulin. This was a serious error because the employer had in place a policy, of which the claimant was aware, that two nurses would verify the correct dosage of insulin before it was given to a resident. The claimant admitted that he knew the policy and that he did not follow it. The policy was instituted in part because the claimant had given the wrong dosage of insulin back on May 28, 2013.

The claimant has not made a weekly claims for unemployment insurance benefits. Neither the claimant nor the employer participated in fact finding.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Insubordination, which is the continued failure to follow reasonable instructions, constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The employer has the burden of proof to show misconduct.

The claimant is not eligible for unemployment insurance benefits. The evidence established that the claimant flagrantly disregarded the rule that two nurses were to verify the amount of insulin given to a patient. The claimant knew this rule and had acknowledged that rule in writing. The most reasonable inference from the evidence is that the claimant made a blatant decision to violate the rule and administer the insulin to the patients. This is insubordination, which is misconduct.

The overpayment issue is moot as the claimant has not filed for weekly benefits.

DECISION:

The decision of the representative dated February 13, 2014, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid

wages for insured work equal to ten times claimant's weekly benefits amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css