IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

PAMELA E WEBSTER Claimant **GOOD SAMARITAN SOCIETY INC** Employer	**APPEAL 18A-UI-07384-CL-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 06/03/18** **Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 3, 2018, (reference 01) unemployment insurance decision that denied benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on August 8, 2018. Claimant participated personally and was represented by attorney Eric Hansen. Employer participated through human resources director Janice Foote and administrator Christy Syndergaard. Claimant's Exhibit 1 was received. Employer's Exhibits A through H were received.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on August 24, 2010. Claimant last worked as a full-time CNA/CMA. Claimant was separated from employment on May 31, 2018, when she was terminated.

Employer has a Medication Administration Policy. The policy states, "Do not leave medications at the bedside or at the table unless there is a specific physician order to do so and the resident has been evaluated for self-administration." The policy requires employees to administer medication in accordance with physician's orders and to accurately document medication administration. Claimant was aware of the policy.

Claimant had a work injury in 2016 and filed a claim for workers' compensation benefits. As a result, she has had various work restrictions since that time.

On August 22, 2017, employer issued all medication aides a document titled "Learning Opportunity for Employers and Supervisors," which stated, in relevant part, that medication aides were not to leave medications at bedside or at the table unless there is a specific physician order to do so and the resident has been evaluated for self-administration. Claimant signed the document.

On October 4, 2017, employer issued claimant a Learning Opportunity document educating claimant about the necessity of checking cassettes against medical documentation and

physician's orders as well as checking for duplicate and missing medications. Claimant signed the document.

On January 17, 2018, employer put claimant on a Performance Improvement Plan after she failed to administer medication on eight occasions, but documented in medical records that she had. Claimant was retrained on the medication administration policy at this time and was monitored by a co-worker for 30 days during medication administration.

On May 4, 2018, claimant was released to return to work with no restrictions. Prior to the release, claimant had restrictions that did not allow her to push or pull more than 20 pounds. Claimant had two therapy appointments scheduled for the end of May 2018. Employer was aware of this information, and determined that it would issue its own restrictions for claimant that she was to abide by until she completed the therapy. On May 4, 2018, claimant signed a document stating that until she completed the therapy she would not operate a mechanical lift or assist with lifting or transferring residents and that she would not push the medication cart.

On May 7, 2018, employer issued a Learning Opportunity document to all medication aides and staff nurses after a resident was administered the wrong dose of potassium numerous times during a two-week time period. Claimant signed the document.

Also on May 7, 2018, employer issued claimant a final warning for failure to administer a medication to a resident, although claimant marked in medical documentation that the medication has been administered.

On May 21, 2018, all medication aides and nurses were given a Learning Opportunity document after employer found a resident did not take medications in 87 instances. The resident had been hiding the medication in a drawer. Medical documentation stated the medication had been administered in each instance. The document stated, in relevant part, "**NEVER EVER should a nurse or CMA leave medications with a resident to take on their own!**" Claimant signed the document.

Claimant completed therapy sessions on May 23 and 24, 2018, and employer was notified on May 29, 2018. Director of Nursing Services Kristy Eitzen told claimant she would check into whether the employer-imposed work restrictions would be lifted.

On May 30, 2018, claimant was working. Claimant passed medication during the dinner hour in the evening in the dining room. Claimant gave one resident a Mucinex pill to swallow. The resident explained she needed to drink a lot of water before taking the pill. Claimant stated that was okay and walked away about the distance of three or four tables and continued on with other job duties. The resident took the medication. Administrator Christy Syndergaard entered the dining room and saw the resident sitting at a table with an empty medication cup in front of her. When asked, the resident told Syndergaard claimant allowed her to self-administer her medication. Syndergaard confronted claimant, who admitted to the conduct but stated she was coming back to the resident's table. Syndergaard admonished claimant. Claimant walked away. Syndergaard then saw three other residents with empty medication cups in front of them at the table. Syndergaard asked one resident whether claimant left medication there with her and the resident confirmed this. None of the four residents had physician's orders that allowed them to self-administer medication.

Later that shift, Syndergaard observed claimant with her hand on a medication cart while it was being pushed by another employee. Syndergaard called claimant into a meeting and sent claimant home for the day.

Employer terminated claimant's employment the next day, on May 31, 2018, for pushing the medication cart and allowing residents to self-administer medication.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 96.5(2)a provides:

> 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 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.

Iowa Admin. Code r. 871-24.32(1)a provides:

> Discharge for misconduct.
>
> (1) Definition.
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> 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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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 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 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.*

Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.,* 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, claimant's action of having her hand on the medication cart while it was being pushed does not amount to misconduct. Claimant had been released to return to work with no restrictions. There was no medical reason for the employer-imposed restriction and the rationale originally given by employer for the restriction was no longer viable as claimant had completed all therapy associated with her injury at that point. Furthermore, claimant had never been previously disciplined for violating the directive and it is not clear she actually did so by having her hand on the cart on May 30, 2018.

Employer also terminated claimant for violating its medication administration policy on May 30, 2018. Claimant allowed a resident to self-administer medication without a physician's order. Claimant had been personally disciplined for violating the employer's medication administration policy on at least two previous occasions and had been put on a performance improvement plan for the same reason. Claimant had received extensive education and training on the medication administration policy and was aware it was a violation of the policy to leave the medication at the table with the resident. Employer has established claimant was terminated for misconduct as it relates to violation of the medication administration policy.

DECISION:

The July 3, 2018, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Christine A. Louis
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Decision Dated and Mailed

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