

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIELLE FENTON GOBLE
Claimant

APPEAL NO: 10A-UI-13388-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 08-08-10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 17, 2010, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 10, 2010. The claimant participated in the hearing. James Keldgord, Administrator; Kristen Paris, DON; and Josh Burrows, Employer Representative, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time charge nurse for Care Initiatives from May 19, 2010 to August 9, 2010. She was discharged because the employer “lost trust in her ability to work as a nurse” because there were medication count inconsistencies during two of her shifts while she was in her probationary period. A nurse who ordered medications for the employer’s facility notified DON Kristen Paris July 22, 2010, that some of the PRN medications were out of the bubble cards but not documented and indicated she had been ordering more PRN medications lately. Ms. Paris began conducting medication counts before and after the claimant’s shifts July 23 and 27, 2010. As the charge nurse the claimant was required to take the medications out of the bubble card and document it on the PRN log sheet as well as on the 24-hour sheet used to notify the nurses on the other shifts of what occurred on her shift. On July 23, 2010, three different residents were missing medications. One was missing four tablets of alprazolam, one was missing one tablet of lorazepam and another was missing one tablet of alprazolam. The missing medications were not documented and the claimant was the only staff member on her shift who could administer PRN medications because she had to assess the patients to determine if they needed the medications as they were prescribed to be given as needed and the certified medication aides were not allowed to give PRN medications. There were also missing medications following the claimant’s shift July 27, 2010. The claimant testified that the medication aides have access to the medication cart and did issue PRN medications after telling her a resident was asking for one of their PRN medications. The employer called the police and

notified the state and the nursing board but none of those entities have acted against the claimant to date. The employer suspended the claimant's employment July 27, 2010, and notified her that employment was terminated August 9, 2010.

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 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.

While there were some medications missing during the claimant's shifts July 23 and July 27, 2010, and the problem apparently ceased in conjunction with her termination from employment, other employees had access to the medication cart during the time in question and no one saw the claimant take any of the medications. Although it looks suspicious, that does not meet the standard required to determine an individual is actually responsible for the act and as the claimant knows it is difficult to prove a negative. It is also possible that another employee was taking the medication on the shifts worked by the claimant and stopped upon seeing the action the employer took against the claimant. While suspicion points to the claimant, the administrative law judge concludes there is not enough evidence to conclude the claimant was responsible for the missing medication and her actions do not rise to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The September 17, 2010, reference 02, decision is reversed. The claimant was discharged for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible to receive them.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs