

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SANDRA P BASS

Claimant

APPEAL 14A-UI-11932-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FRIENDSHIP HAVEN INC

Employer

OC: 10/19/14

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 14, 2014, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 9, 2014. Claimant participated. Employer participated through Melissa Nanninga, Human Resources Coordinator and Rollie Peterson Vice-President. Claimant's Exhibit A was entered and received into the record. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as an adult day program assistant beginning on November 21, 2000 through October 23, 2014 when she was discharged. The claimant was discharged under the employer's progressive disciplinary policy, a copy of which had been given to her. The employer's policies require that after medication is passed out to residents, the medication box must be re-locked and the medication box itself locked in a cabinet. The claimant got distracted and left the medication box unlocked out on a counter in the dining room while she went on an outing with the residents. In July 2014 the claimant was disciplined for the same policy violation when she was given a verbal counseling by one of the nurses. State regulation requires the employer keep the medication box locked and secured. She was suspend for one day in June 2014 and was warned that any additional violations of policy could result in her termination. The claimant was not treated any differently than any other employee. The claimant was discharged in part because she violated the same policy within four months and because of where she was on the progressive disciplinary policy.

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:

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.

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 Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant had at least one prior warning for failing to lock up and secure the medication box after passing medicine to the residents. Her violation placed the health and safety of the residents in jeopardy and is conduct not in the employer's best interests. Claimant's repeated failure to safely lock up the medication box after having been warned is evidence of carelessness to such a degree of recurrence as to rise to the level of disqualifying job related misconduct. Benefits are denied.

DECISION:

The November 14, 2014 (reference 01) 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css