

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RENEE T CLAY
Claimant

HY-VEE INC
Employer

APPEAL 20R-UI-03976-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/08/20
Claimant: Appellant (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Renee Clay (claimant) appealed a representative's March 20, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits after a separation from work with Hy-Vee (employer).

Administrative Law Judge Merrill issued a decision on April 15, 2020, affirming the representative's decision. A decision of remand was issued by the Employment Appeal Board on May 7, 2020. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 29, 2020. The claimant was represented by Tristan Pollard, Attorney at Law, and participated personally. The employer was represented by Frankie Patterson, Hearings Representative, and participated by Jamie Franck, District Store Director; Caitln Miller, Pharmacy Manager; and Lindsey Rogness, Multi-Department Manager.

The employer offered and Exhibit One was received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on December 4, 2015, as a full-time pharmacy technician. On May 8, 2016, she signed that she would follow the employer's policies for release of medication to patients. The employer did not issue the claimant any warnings during her employment.

The employer's procedures indicate that certain verifications must occur before a medication is released. If a medication is to be collected in person, the person collecting the medication must provide identifying information. That information must correspond with the information on the medication. If the medication is bagged, the items in the bag must be verified as going to the same patient with the same information.

On February 5, 2020, there were two prescriptions for insulin in the refrigerator. Both patients had similar names. The prescriptions were for different dosages. A patient's husband approached the desk and asked for his wife's prescription. The claimant took the wrong prescription from the refrigerator. She did not follow proper protocol for ensuring the prescription reached the correct patient by confirming certain data. The prescription went home with the wrong patient.

On February 21, 2020, the claimant was arranging medications for delivery to two patients. Both patients had the same first name and different last names. It was a busy time at work. The claimant laid out the medications on the counter and in the end placed all seven medications in one bag. When she realized her error, she told her supervisor and went to the house of the patient. The patient refused to admit she had received a controlled substance. The claimant returned to work. The employer threatened the patient with police action before the patient returned the controlled substance. The employer told the claimant it would consider discipline.

On March 3, 2020, the patient who received the wrong dosage of insulin contacted the employer. She had been to her physician and discovered the wrong dose had been given to her by the claimant.

On March 3, 2020, the employer called the claimant in for a meeting. The claimant did not offer any reason for the errors, except that February 21, 2020, was busy. The employer terminated the claimant for repeated failure to follow instructions when dispensing medications.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code section 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 disqualification shall continue 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

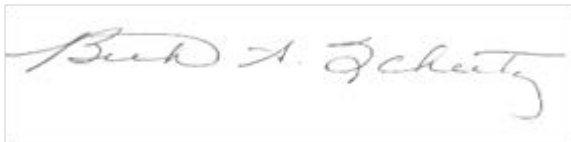
is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard 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 employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. In this case, the claimant's failure to follow the policy by checking names could have dire consequences. When a claimant disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's March 20, 2020 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.



Beth A. Scheetz
Administrative Law Judge

June 2, 2020
Decision Dated and Mailed

bas/scn