

BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

SHEILA R HOODJER

Claimant

and

CHATAUQUA GUEST HOME

Employer

HEARING NUMBER: 18BUI-00079

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.6-2, 96.5-2-A

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant was employed as a licensed professional nurse ("LPN") and charge nurse. The Claimant's job duties included supervising other nurses and medication aides, assisting patients, passing out medication and performing assessments. The Claimant was employed by the Employer from April 20, 2012 until she was fired November 28, 2017. Claimant's immediate supervisor was Director of Nursing Ginger Schmidt.

On November 20, 2017, the Claimant attended a mandatory work meeting. Following the meeting, another nurse on duty, Peggy, asked her to cover her shift while she attended to a family member who was admitted to the emergency room. The Claimant agreed to do so.

During this shift, the Claimant met with DON Schmidt because she had learned her hours were being decreased on the schedule. DON Schmidt told the Claimant that her behaviors needed improving and that is why her hours were decreased on the schedule. This conversation with the DON upset the Claimant.

After the Claimant met with DON Schmidt, she and the other charge nurse on duty, Missy, learned that Peggy had taken the keys to the medication cart with her when she left. Claimant told Missy that she was going to go to the emergency room and get the keys from Peggy, and that she would return to work only to bring the keys after which time she would go home. Claimant attempted to find Peggy but she was not at the emergency room.

The Claimant telephoned Missy and told her that Peggy was not at the emergency room. Claimant then told Missy that the Claimant was going to go home for the rest of the shift. Missy did not specifically tell the Claimant that it was acceptable for her to go home. The Claimant did not ask permission but merely told Missy that she was going home. The Claimant was in her car at the time of the conversation. At that time medication passes still had to be made for the 53 residents. The Claimant had left early before only late at night when everyone was in bed and scheduled cares were completed.

Missy came into to DON Schmidt's office and informed her that the Claimant had left work and she asked for help since she could not perform the scheduled nursing cares by herself. When the Claimant came to work on the following day she initiated the conversation with DON Schmidt by asking how she would be punished for not finishing the shift.

On November 28, 2017, Claimant was discharged for leaving her shift early on November 20, 2017.

REASONING AND CONCLUSIONS OF LAW:

We affirm the Administrative Law Judge on the issue of timeliness.

Iowa Code Section 96.5(2)(a) (2018) provides:

Discharge for Misconduct. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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 is the meaning which has been given the term in other jurisdictions under similar statutes, and we believe it accurately reflects the intent of the legislature." *Huntoon v. Iowa Department of Job Service*, 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 Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 NW2d 661 (Iowa 2000).

It is the duty of the Board as the ultimate trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The Board, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, as well as the weight to give other evidence, a Board member should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what evidence to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence the Board believes; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). The Board also gives weight to the opinion of the Administrative Law Judge concerning credibility and weight of evidence, particularly where the hearing is in-person, although the Board is not bound by that opinion. Iowa Code §17A.10(3); *Iowa State Fairgrounds Security v. Iowa Civil Rights Commission*, 322 N.W.2d 293, 294 (Iowa 1982). The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence considering the applicable factors listed above, and the Board's collective common sense and experience. We do not find credible that the Claimant actually thought that she was following the correct procedure by getting permission by Missy when the DON was available, and when scheduled cares were not completed. We find that the Claimant simply told Missy she was leaving to go home, and that she did not in fact actually seek permission. We find that the Claimant's inquiry about what her punishment would be when she first saw DON Schmidt the next day corroborates that she knew she was not following policy.

In instances where an employee is fired for a *single* unexcused absence, the issue is somewhat different than with excessive absenteeism. See *Hiland v. EAB*, No. 12-2300 (Iowa App. 7/10/13). With a single absence misconduct can be shown based on things such as the nature of an employee's work, the effect of the employee's absence, dishonesty or falsification by the employee in regard to the unexcused absence, and whether the employee made any attempt to notify the employer of the absence. *Sallis v. Employment Appeal Bd*, 437 N.W.2d 895, 897 (Iowa 1989). Here the balance of factors support that the Claimant was guilty of misconduct by leaving work without permission that final day. Fundamentally the nature of the work and the effect of the absence of one of the LPN's at a care facility is profound. The evidence shows that the Employer was left short-handed to make med passes to 53 residents. As a nurse, the Claimant would be obliged to undergo regular continuing education regarding the practice of her profession. 655 Iowa Admin. Code 5.1. As a licensed professional, a nurse is expected to conform to certain standards of behavior and an employer may expect, when it employs a nurse, that the nurse will do so. Naturally, a nurse is

expected not to simply leave in the middle of a shift. 655 IAC 4.6(3)g. (ground for discipline of a nurse include "[f]ailing to report to, or leaving, a nursing

assignment without properly notifying appropriate supervisory personnel and ensuring the safety and welfare of the patient or client.”). The Claimant did inform Missy that she was leaving, but did not actually request permission from anyone or notify the DON. Further, the reason the Claimant had for leaving was her reaction to discipline. Thus her actions also are generally not a good reason for missing work. *C.f.* 871 IAC 24.25(28) (not good cause to quit over reprimand). Given the profound effect of a nurse simply leaving her assignment while many cares have yet to be performed we find that the Claimant committed disqualifying misconduct.

DECISION:

The administrative law judge’s decision dated January 29, 2018 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for disqualifying misconduct. Accordingly, she is denied benefits until such time 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. See, Iowa Code section 96.5(2)”a”.

The Board remands this matter to the Iowa Workforce Development Center, Benefits Bureau for a calculation of the overpayment amount based on this decision.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

RRA/fnv