

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JANEEN L RAMBO**  
Claimant

**IOWA PHYSICIANS CLINIC MEDICAL FO**  
Employer

**APPEAL 19A-UI-9444-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/27/19  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Janeen Rambo (claimant) appealed a representative's November 27, 2019, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from work with Iowa Physicians Clinic Medical (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 31, 2019. The claimant participated personally. The employer participated by Trinity Cigrand, Human Resources Business Partner. The claimant offered and Exhibit A was received into evidence.

**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 November 24, 2014, as a full-time patient service representative. The employer has its policies on the internet but the employer did not ask the claimant to acknowledge that she had received them. In a meeting, a co-worker asked a supervisor about warnings. The claimant learned that the employer had a progressive disciplinary policy.

The Workplace Attitude Policy states, "Courteous treatment, a smile, friendliness, and the offer of assistance, all prove that the organization and its staff members are giving its best effort. It is of utmost importance that every staff member be courteous, friendly, helpful, and prompt in the attention accorded patience, visitors and staff members." The Patient and Employee Relation Policy stated "Every staff member and co-worker in the organization should be treated in the same manner as the patient. A friendly and cooperative attitude is the key to getting along well with your fellow staff members."

On May 7, 2018, the employer issued the claimant a verbal warning for making one personal call at work. The claimant's brother was having issues and she was checking on him. On May 21, 2018, the employer issued the claimant a written warning for attendance. All the

claimant's absences were due to a medical issue and properly reported. She provided a doctor's excuse for all absences. The employer notified the claimant that further infractions could result in termination from employment.

On March 10, 2019, the office was working without any supervisors. Numerous patients were waiting on the telephones and there were ten people in line waiting to check out. Staff in the front were told to help in the claimant's area if needed. The claimant asked the staff in the front to help if they were not busy. On March 11, 2019, the employer issued the claimant a written warning for monitoring co-worker's performance. The employer notified the claimant that further infractions could result in termination from employment.

Frequently the claimant's area had trouble hearing because the workers in the pediatric zone were laughing, joking, and mocking others. Patient's complained about the pediatric workers. The claimant mentioned the problem and a specific worker but over the year nothing changed.

On October 26, 2019, the claimant received a personal call at work from her mother. She learned that her brother had a seizure while driving, crashed his vehicle, and was hospitalized. The claimant was upset. The claimant immediately went to her supervisor and reported her personal call. Her supervisor indicated that the call had been reported to her by another worker. The claimant thought it was the same worker she had complained about in the past.

The claimant sent the worker an instant message that read, ""The next time you feel you need to snitch about me on a personal phone call please keep your nose in your own business I thought you were better than that but really, Nicole. I didn't get in trouble. Stacy is very much aware of what happened. I never email or snitch to Mark about what happens in your area and I never would I am not a snitch."

Shortly after sending the instant message, the claimant apologized. She realized she was under pressure from her brother's medical condition and hospitalization. On October 31, 2019, the employer terminated the claimant for violating the Workplace Attitude Policy and the Patient and Employee Relation Policy. The other worker was not terminated.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not 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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the claimant's testimony to be more credible because she was an eye witness to the events of her employment. The employer's witness relied on the documents. Those documents were not provided to the claimant or offered as evidence.

Based on the testimony provided by the claimant, she was only given one warning for inappropriate conduct during her almost five years of employment. That involved a situation where she acted to help patients at the risk of her career. It is unknown whether the employer applied those policies to the employees in the front who did not help patients at the back. The claimant's behavior does not appear to be inappropriate in that circumstance.

In the final incident, she had a good faith error in judgment on a day when her brother is hospitalized and a co-worker acts contrary to the employer's policies. Instead of treating the claimant "in the same manner as the patient" who has heard news about a family member, the employer terminated her. The claimant's behavior was unsatisfactory but it did not rise to the level of misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's November 27, 2019, decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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