

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**CLAIMANT**

Claimant

**APPEAL 15A-UI-05812-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EMPLOYER**

Employer

**OC: 04/12/15**

**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the May 7, 2015, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on June 23, 2015. The claimant participated. Although properly notified for the hearing, the employer elected not to participate.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a CNA and was separated from employment on April 2, 2015, when she was discharged for a failure to report abuse.

In February or March of 2015, the claimant witnessed an incident with a resident and another CNA, where the CNA licked her hand and rubbed it on the resident. The claimant told another CNA about the incident, who reported to a nurse. The claimant should have reported it directly to her supervisors. A day or two after the incident, the claimant issued a written statement about the incident. The claimant was later given an educational write up for her failure to properly report the potential abuse. At the time of the disciplinary action, the claimant was told it “was nothing to worry about” and the claimant was not made aware that additional disciplinary action may follow. She was later discharged for the same incident based on her failure to report.

The employer did not attend or provide any applicable policy or supporting documentation for the hearing. The claimant was unsure if she was discharged based on a confirmed account of abuse by DHS or because the claimant violated an internal policy of the employer.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge (ALJ) concludes the claimant was not discharged for work-connected 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).

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

(4) Report required. The claimant's statement and the 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.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5(2)a. The rules define misconduct as deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. Iowa Admin. Code r. 871-24.32(1).

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). Whether the discharge was warranted 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. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

No person with any direct knowledge of the situation, other than claimant, participated in the hearing on behalf of the employer. No request to continue the hearing was made and no written statements of those individuals were offered. Mindful of the ruling in *Crosser, id.*, and noting that the claimant presented direct, first-hand testimony while the employer did not attend or present any evidence, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer. Based on the evidence that was presented, the claimant is not prohibited by any state law or regulation to perform her normal job duties for this employer. DHS has not prohibited her from performing her normal job duties. The administrative law judge concludes the employer has not established misconduct.

While the employer may have been justified in terminating the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful misconduct or repeated negligence has been proven in this case.

**DECISION:**

The May 7, 2015, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The benefits claimed and withheld shall be paid, provided she is otherwise eligible.

---

Jennifer L. Coe  
Administrative Law Judge

---

Decision Dated and Mailed

jlc/pjs