

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

SANDRA M WINDISCH
Claimant

APPEAL NO: 18A-UI-07061-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEACON OF HOPE HOSPICE INC
Employer

OC: 05/13/18
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 22, 2018, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 19, 2018. The claimant participated in the hearing. Jennifer Romano, Vice-President of Human Resources and Sam Krauss, Employer Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One through Four were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time patient care manager for Beacon of Hope Hospice, Inc. from August 29, 2017 to May 11, 2018. She was discharged for performance issues.

The claimant received a performance improvement plan (PIP) April 10, 2018, and was given 30 days to improve her performance (Employer's Exhibit One). The three areas of concern listed by the employer were not making admissions a priority and making sure they occur within a two hour time frame; not doing ride-alongs with case managers who needed support on a weekly basis; and failing to effectively communicate each day with the clinical staff about changes that occurred with patients throughout the day. The branch manager was to meet with the claimant throughout the 30 days she was on the PIP but no meetings took place. The employer provided an Update on the Performance Improvement Plan (Employer's Exhibit Two) and indicated the branch manager met with the claimant April 30, 2018, but he was the only one to sign that document and the claimant denies that any meeting ever took place.

The claimant felt she improved in the area of timely admissions and making admissions a priority. After the PIP was instituted she did three ride-alongs with the nurse who was uncomfortable with a few clients, and believed she communicated effectively with the staff.

The final incident that caused the employer to determine the claimant was not meeting her PIP occurred May 10, 2018. The employer stated the claimant received a message from the triage

nurse at 9:00 a.m. stating a patient was suffering from intractable vomiting and needed to be seen but the patient was not visited until 2:30 p.m. when another nurse went to her location. The claimant left the office and saw two routine follow-up patients instead of going to the patient suffering from vomiting. The claimant stated that patient had been vomiting when laid down after dinner the previous two nights but was doing fine that morning. A nurse told the staff not to lay the patient down after eating and she was given anti-nausea medication. The claimant did not believe it was an emergent situation and the triage nurse did not send the on-call nurse when the situation occurred the previous night. The claimant did send the nurse who had visited the patient the last two days due to her vomiting to maintain continuity of care.

The employer determined the claimant did not have a "hospice mind" and terminated her employment May 11, 2018.

The claimant had not received any previous documented verbal warnings and had not received any written warnings.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying misconduct. *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 N.W.2d 661, 665 (Iowa 2000).

The claimant was placed on a PIP without receiving any documented verbal or written warnings. She was given three areas on which to improve upon and felt she did so. The employer did not meet with the claimant to notify her of her progress in areas it felt she was still struggling with performing and the claimant believed she had shown improvement in the areas of concern. The employer did not provide specific examples of incidents where the claimant failed to meet the PIP expectations with the exception of the final incident which occurred May 10, 2018.

With regard to the final incident, the claimant made a judgment call as patient care manager. It was her understanding the situation with the patient vomiting occurred the night before and therefore was not emergent. She also based her decision to send another nurse to see that patient at 2:30 p.m. on the fact the triage nurse had not called the on-call nurse the night before to see the patient. Additionally, the claimant believed it was helpful to send the same nurse who had seen the patient the previous two days for her vomiting. While the claimant may have made an error in judgment, it was not intentional misconduct. The employer concluded the claimant did not have a "hospice mind" which implies she was not a good fit and did not have the ability to perform the job to the employer's satisfaction. Inability to perform the job to the employer's expectations is not considered misconduct under Iowa law. Misconduct connotes volition. A failure in job performance which results from inability or incapacity is not volitional and therefore not misconduct. *Huntoon v. Iowa Department of Job Services*, 275 N.W.2d 445 (Iowa 1979). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. EAB*, 423 N.W.2d 211 (Iowa App. 1988).

Under these circumstances, the administrative law judge must conclude the employer has not established disqualifying job misconduct on the part of the claimant as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The June 22, 2018, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn