IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

LEANN S WILSON Claimant **THE UNIVERSITY OF IOWA** Employer	**APPEAL 15A-UI-09757-JP-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 08/02/15** **Claimant: Appellant (2-R)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 26, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 21, 2015. Claimant participated. Employer participated through human resource coordinator, Stacy Pruter, and associate director of human resources, David Bergeon. Carol Wehby and Mary Eggenburg were present on behalf of the employer. Employer Exhibits One through Six were admitted into evidence with no objection.

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: Claimant was employed full-time as a mail center coordinator from October 23, 1989, and was separated from employment on July 30, 2015, when she was discharged.

On June 17, 2015, claimant was placed on a medical leave of absence from the employer. The claimant was originally scheduled to return on July 22, 2015. Employer Exhibit Two. Before claimant could return to work, she needed to have a release to work form completed by that date. Claimant's scheduled return date was changed to July 29, 2015. The employer received a medical excuse, which excused claimant from work until July 28, 2015; this was not a release to work form. Employer Exhibit Three. On July 28, 2015, claimant did not show up for work. The employer told claimant on June 19, 2015, that she needed to have a release to work form filled out. On July 27, 2015 and July 28, 2015, claimant was again told she needed a release to work form completed before she could return to work. Claimant returned to work on July 29, 2015. Claimant did not provide the employer with a signed release to work form. Once it was discovered, claimant was escorted out of the office by Ms. Pruter. Claimant was ordered to leave because she did not have a medical release. By not having a release, this put the employer at risk if claimant was injured at work. Claimant was also using a patient wheelchair,

which the employer does not allow employees to use, they are for patients only. After claimant had left, the employer received a doctor's document from Dr. Fattal that excused claimant from work until October 2015. Claimant was discharged on July 30, 2015 for returning to work without having a release to return to work and for using a patient wheelchair as an employee.

The employer has a progressive disciplinary policy that provides for: a written warning, one-day suspension, three-day suspension, five-day suspension, and then termination. Claimant was last warned on May 29, 2015, that she faced termination from employment; claimant was given a five-day suspension for being tardy. Claimant received a three-day suspension on May 15, 2015 for failure to properly report an upcoming absence. Claimant received a one-day suspension for respond while on investigatory leave on February 5, 2015. Claimant received a written letter of reprimand on December 19, 2014 for neglecting job duties and responsibilities, disclosure of confidential records, leaving her place of duty during shift without permission, and use of offense language.

REASONING AND CONCLUSIONS OF LAW:

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

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(8) provides:

> (8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). 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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.,* 391 N.W.2d 731 (Iowa Ct. App. 1986). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990); however, "Balky and argumentative" conduct is not necessarily disqualifying. *City of Des Moines v. Picray*, (No. __-__, Iowa Ct. App. filed __, 1986).

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. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the incident under its policy. A properly reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act.

Claimant was discharged for reporting to work without providing a release to work form. Claimant had provided a release to work form dated July 6, 2015 to the employer. Employer Exhibit Two. This release provided that she was not to return to work until she saw Dr. Fattal; it also provided that she was not to return until at the earliest July 22, 2015. Employer Exhibit Two. Claimant then had another medical excuse sent to the employer excusing her from work until July 28, 2015. Employer Exhibit Three. There was no accompanying release to work form provided with Employer Exhibit Three. The employer contacted claimant multiple times prior to July 29, 2015, telling claimant she needed to provide a release to work form before she would be allowed to return to work. The employer also contacted claimant informing her that they had not received any further medical excuses and expected her to work on July 29, 2015. Claimant did return to work on July 29, 2015. Claimant did not have a release to work form when she returned. In fact, claimant is not able to return to work until October 2015. Employer Exhibit Four. Claimant had trouble being steady and would benefit from sitting. Employer Exhibit Five. On July 29, 2015, claimant was escorted out of the building by the employer because she did

not have a return to work. Later that same day (July 29, 2015), the employer received from Dr. Fattal medical documentation that claimant could not return to work until October 2015. Claimant was then discharged on July 30, 2015.

The conduct for which claimant was discharged was merely an isolated incident of poor judgment and inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. A warning for absenteeism or insubordination is not similar to reporting to work without a release to work form and the employer's simple accrual of a certain number of warnings counting towards discharge does not establish repeated negligence or deliberation and is not dispositive of the issue of misconduct for the purpose of determining eligibility for unemployment insurance benefits. Furthermore, the employer received documentation from Dr. Fattal that claimant should not return to work until October 2015. Employer Exhibit Four. Benefits are allowed.

An issue remains as to whether claimant is able and available to work and when she became able and available to work.

DECISION:

The August 26, 2015, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

This matter is remanded for a determination on the issue of whether claimant is able and available for work.

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Jeremy Peterson
Administrative Law Judge

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Decision Dated and Mailed

jp/pjs