IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

Claimant Employer	**APPEAL 15A-UI-07726-CL-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 06/07/15** **Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from the June 29, 2015, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 4, 2015. Claimant participated personally and through her attorney and witness. Employer participated through its attorney, administrator, and director of nursing. Employer's Exhibits 1, 2, 3, 5, 6, 7, 8, and 9 were received. Employer's Exhibit 4 was discussed, but was not offered for admission into the record.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an office manager from April 9, 2012, and was separated from employment on June 5, 2015, when she was terminated.

At some point during her employment, claimant reported to employer's corporate office her belief that administrator mistreated a resident. Specifically, claimant reported administrator told a resident not to use the call light during mass. Administrator was aware claimant made this report, but denied the truth of the allegations.

In 2015, claimant completed the annual OSHA log for the facility at which she worked. In the past, an employee from the corporate office assisted claimant with this task. In 2015, claimant again asked for help and administrator assisted her with the task. Employer's consultant discovered a number of errors in the annual log.

On March 3, 2015, administrator's supervisor sent her an email encouraging her to document an issue regarding claimant's performance for her "file."

On March 5, 2015, administrator met with claimant and gave her a written warning regarding mistakes in the annual OSHA log and about "attention to detail." Many of the issues administrator covered with claimant occurred in 2014.

On May 8, 2015, administrator told claimant to go home early that day and consider whether the position of office manager was right for her. Administrator told claimant she did not agree with the amount of paid time off claimant was taking to attend her children's appointments and events.

On or about June 5, 2015, employer's consultant found seven errors in the weekly OSHA log. Administrator learned there was also one error in the most recent payroll submission. Claimant was responsible for completing the weekly OSHA log and submitting the facility's payroll records to the corporate office. However, claimant had been on vacation the previous week.

On June 5, 2015, administrator told claimant she needed to speak with her. Claimant asked if she was being terminated. Administrator stated, "Yes, I have to. Corporate is making me. Payroll did not go through." Claimant gathered her things and left. Later that day, administrator informed witness that she let claimant go.

Director of Nursing later sent claimant a text message stating administrator had been pressured by the corporate office to terminate claimant.

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 § 96.5-1 provides:

> An individual shall be disqualified for benefits:
>
> 1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

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.

As a preliminary matter, I find the claimant was terminated. The employer's witnesses were not credible on this point given the comments administrator made to witness after claimant's separation and the text message director of nursing admitted sending to claimant.

The next issue is whether claimant was terminated based on misconduct.

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 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). 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 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *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). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

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 Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

Here, employer 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.

Employer gave claimant only one warning regarding work performance issues during the last year of her employment. This was on March 5, 2015. The warning addressed conduct that had occurred months earlier. The March 5, 2015 warning also addressed the annual OSHA log which administrator helped claimant complete.

Administrator did not warn claimant about work performance or suspend her on May 8, 2015. Instead, administrator expressed her difference in personal philosophy on work-life balance and encouraged claimant to resign. Claimant was aware her job was in jeopardy, but not because of her work performance.

Claimant was not given a final warning on May 18, 2015. It defies logic that an employer would give an employee a final warning regarding termination and not have the claimant sign the document memorializing the final warning.

Claimant was being targeted for termination by administrator and the corporate office, but employer did not ever clearly explain to claimant the actions she needed to take or changes she needed to make to preserve her employment. Employer did not show claimant acted with culpability in her work performance, and thus has not established misconduct.

DECISION:

The June 29, 2015, (reference 02) unemployment insurance decision is affirmed. Claimant was terminated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

_____

Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

_____

Decision Dated and Mailed

cal/pjs