

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**DENISE A TEDROW**  
Claimant

**ADAIR COUNTY MEMORIAL HOSPITAL**  
Employer

**APPEAL NO. 21A-UI-21482-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/08/21  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated September 21, 2021, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on December 6, 2021. Claimant participated personally and with witness Aubrie Keller. Employer participated by Amy O'Rourke. Claimant's Exhibit A and Employer's Exhibits 1-7 were admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on August 9, 2021. Employer discharged claimant on August 9, 2021 because employer believed that claimant was dishonest repeatedly regarding a medical device and what had occurred with the device.

Claimant worked as a case manager for employer, and had for over 20 years.

A patient was given a wound vacuum – a very expensive machine used in treatment of wounds – on or around June 3, 2021. At some time the patient went to a doctor's visit at another hospital. Claimant stated she remembered the patient leaving with the wound vac, but when he returned, he did not have the device.

After the patient was discharged to other care, the hospital attempted to recover the wound vac. Claimant told administration that the patient left with the device when he went to visit an outside doctor, and did not return with the device. Claimant's thought was supported by a nurse working at the time. Employer further investigated into the issue, and determined that a nurse told housekeeping to clean everything out of the room. Although the housekeeper did not clean 'everything' out of the room, sheets and bedding were removed and the housekeeper also stated she removed and threw away the wound vacuum. This was a very expensive device that

the housekeeper believed she threw away in error. (The housekeeper was not called by employer as a witness in this matter.)

Employer stated that claimant was terminated for saying that the patient took the device away from the hospital when he went to the doctor, and did not return with the device. This statement caused administration to strongly pursue recovery of the device through the family of the patient. (The patient passed away after leaving the hospital.)

Claimant stated that she did not intend to deceive the hospital as to the whereabouts of the device. Claimant had no active participation in the moving of the device at any time and her answers given to administration were based on her memory – which was supported by the memory of at least one other worker.

Claimant had never previously been warned concerning dishonesty, nor for a lack of documentation.

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

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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers*, 462 N.W.2d at 737. 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. Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

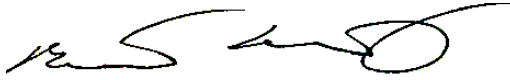
It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, Id. In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, Id.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning stating to the employer where she believed the wound vacuum was seen last. Claimant was not warned concerning this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because claimant offered to employer the best information she had available. This information may well have been incorrect. (The administrative law judge is not certain as to what actually happened to the device as the person who allegedly said she threw away the device did not testify.) But, even if the information was incorrect, and claimant strongly believed that her statement to employer was correct, employer has not shown that claimant *intended* to deceive or lie to employer. (Italics added for emphasis.) The claimant was never disciplined for being dishonest in the past, and was not shown to be dishonest on this occasion – although she may well have been incorrect in her assumption. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated September 21, 2021, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.



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Blair A. Bennett  
Administrative Law Judge

January 7, 2022  
Decision Dated and Mailed

bab/scn