

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

HAYLEY J POE
Claimant

APPEAL NO: 18A-UI-11712-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PINNACLE HEALTH FACILITIES XVII L
Employer

OC: 11/04/18
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 3, 2018, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 3, 2019. The claimant participated in the hearing with Attorney Lori Bullock. The employer did not respond to the hearing notice and did not participate in the hearing.

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 RN Charge Nurse for Pinnacle Health Facilities from January 16, 2015 to November 4, 2018. She was discharged for alleged insubordination.

On July 11, 2018, the claimant contacted the Department of Inspections and Appeals (DIA) and stated there was neglect and abuse occurring at the employer's facility. The claimant's name was included in the surveyor's report and consequently the employer was aware the claimant reported it to DIA.

The claimant was assigned to work on one of two halls. One hall was much easier than the other. Prior to July 11, 2018, employees were rotated between the two halls every two or three days. After the employer learned the claimant reported it to DIA, the claimant was permanently assigned to work the more difficult hall. The claimant made several requests to be moved to the other hall but was not moved.

On October 24, 2018, the claimant was working on the difficult hall and was working with a resident who was upset about the amount of oxygen prescribed to him. The claimant was explaining the safety concerns of prescribing higher levels of oxygen when the resident threw her pulse oximeter at her and struck her. The instrument, which was purchased by the claimant, then fell to the floor and broke. The claimant went to the nurses' station and was

crying. The director of nursing (DON) was standing behind her as she explained what happened in the resident's room. The claimant asked the DON if she knew what his oxygen order was and then said, "I can't take this anymore. I have done everything but beg to get off this hall." She then stated she would call in sick in the future every time she saw she was assigned to work on the more difficult floor. The DON said, "Hayley that is enough." The claimant left the nurses' station and went to the medication room to finish crying and then concluded her medication pass. The claimant returned to work her next scheduled shift October 29, 2018, and the employer suspended her for three days for the incident on October 24, 2018. When the claimant returned to work November 5, 2018, the employer terminated her employment.

The claimant received a written warning in July 2018 for "being annoying" and yelling at a co-worker and received a written warning in September 2018, for a medication error.

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).

When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. The employer has not met its burden of proof. Therefore, benefits must be allowed.

DECISION:

The December 3, 2018, reference 01, decision is reversed. 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