

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PAULINA KPOR
Claimant

BROADLAWNS MEDICAL CENTER
Employer

APPEAL 17A-UI-01606-NM

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/01/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 7, 2017, (reference 01) unemployment insurance decision that denied benefits based upon her discharge for insubordination. The parties were properly notified of the hearing. An in-person hearing was held in Des Moines, Iowa on March 1, 2017. The claimant participated and testified. Jackson Vincnt was also present on behalf of the claimant, but did not testify. The employer participated through Vice President of Human Resources Julie Kilgore, Team Lead Doug Anderson, and Director of Nutrition and Environmental Services Adam Mouse. Employer's Exhibits 1 through 7 and claimant's Exhibits A through C were received into evidence.

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 an environmental services technician from January 27, 2014, until this employment ended on January 4, 2017, when she was discharged.

On January 1, 2017, claimant came to work as scheduled and, after clocking in, went straight to the emergency room, where she was scheduled, to begin working. That same day another individual, who was scheduled to work in the linen room, called off leaving no one working in that area. Of the seven individuals working in claimant's department that day, she was the only one who had been trained in the linen room, so Anderson informed her he was going to change her work assignment for the day. Claimant told Anderson she could not work in the linen room because she had not been trained on how to work there on the weekends.

Claimant had worked in the linen room before, but it had always been during the week. Mouse testified that the work in the linen room during the weekend is slightly different than during the week because many departments are closed on the weekend, leaving less work to do. There are also several other tasks, such as inventory, that employees are required to do during the

week that are not done on the weekend. Mouse acknowledged that during the week two people are usually assigned to the linen room, but this is unnecessary on the weekend due to the lighter workload. Mouse explained that because the work is essentially the same during the week as on the weekend there is no separate training for weekend work.

Anderson again told claimant he needed her to work in the linen room and she again refused, repeating that she had not been trained for work on the weekends. Anderson called Mouse, who reiterated that claimant needed to work in the linen room. Claimant still refused. Anderson eventually told claimant if she was not going to work in the linen room, she needed to go home. Claimant then went home and was later discharged for insubordination. Kilgore testified that prior to this, in October 2016, claimant had once before refused to work in linen, though in that circumstance she eventually agreed to the work assignment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged for disqualifying misconduct. Benefits are withheld.

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).

The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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 evidence presented in the hearing shows claimant refused to work in the linen area as assigned on January 1, 2017. Claimant contends her refusal was reasonable because she had not been trained to work in linen on the weekends. The employer provided credible testimony that there was no separate training for weekend work in the linen room and that the duties on the weekend were significantly less than those during the week due to so many departments being closed. Nothing about the employer's instruction was unreasonable or outside the scope of claimant's ordinary job duties. Claimant's refusal to work in the linen room after being specifically told to work there is intentional misconduct. Benefits are withheld.

DECISION:

The February 7, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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