

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JORGANN RETTINGHAUS**  
Claimant

**IDA COUNTY COMMUNITY HOSP INC**  
Employer

**APPEAL 19A-UI-05587-CL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/16/19**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

On July 13, 2019, the claimant filed an appeal from the July 11, 2019, (reference 01) unemployment insurance decision that denied benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on August 7, 2019. Claimant participated. Employer participated through vice president of human resources Lorraine Davis, radiology director Crystal Endrulat, radiology technologist Emily Fineran, and quality services specialist Kristin Dixon. Employer was represented by Thomas Kuiper. Employer's Exhibit 1 was received. Claimant's Exhibits A through D were received.

**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 began working for employer on October 21, 1996. Claimant last worked as a part-time radiology technologist. Claimant was separated from employment on June 18, 2019, when she was terminated.

As a radiology technologist, claimant was responsible for preparing patients for and administering CT scans. When preparing a patient for a CT scan, a radiology technologist is responsible for introducing contrast material into the patient to highlight the desired area of the body. The contrast material can be given intravenously. The contrast material must be administered in accordance with doctor's orders.

Employer has a policy stating that contrast material can only be injected into a patient one time in a 24-hour period. Employer has a policy stating that if the contrast material infiltrates into the patient's body tissue, the patient must be evaluated in the emergency room and an incident report must be completed. Per the policy, the infiltration should also be noted in the patient's chart. Finally, employer has a policy stating that medical records cannot be deleted. Claimant was aware of the policies.

On April 16, 2019, claimant had a heart attack. Claimant went on medical leave and returned on May 31, 2019.

On June 7, 2019, employer assigned claimant to conduct a CT scan. Claimant injected the contrast material into the patient intravenously, but the contrast material infiltrated into the patient's body tissue. Claimant brought the patient to the emergency department for examination, in accordance with employer's policy. Claimant consulted with the ordering physician, Dr. Luebbert, who instructed her to give the patient a second injection of the contrast material and try again. Claimant injected the patient with a second dose of contrast material. The injection was successful, but due to poor timing claimant did not get a good scan of the patient. Claimant went to radiology technician Emily Fineran and asked her for assistance. Fineran went to assist claimant. Claimant did not consult with Dr. Luebbert about injecting a third dose of contrast material. Fineran questioned claimant on whether it was safe to administer a third dose and whether they should consult with Dr. Luebbert about the third injection. Claimant said she could inject up to 150 ccs in the patient and she would take responsibility if she was wrong. The third injection and scan were successful.

After the scan, claimant called Iowa Radiology and asked the information technologists to delete the first two scans. Normally, a radiology technician would ask a manager to finalize the scan that was successful. No manager was present on June 7, 2019.

Claimant did not complete an incident report on the infiltration and did not document in the patient's chart that the infiltration occurred.

On June 8, 2019, claimant sent an email to her doctor stating she was having memory loss and confusion after her heart attack and asking if this was normal. On June 10, 2019, a registered nurse responded to the email by stating fatigue following a heart attack is common and can cause some confusion and mild memory issues. The nurse instructed claimant to see her primary care physician if she was concerned, as there could be other issues causing the confusion and memory loss.

On June 14, 2019, Fineran asked radiology director Crystal Endrulat if claimant submitted an incident report for the CT scan on June 7, 2019. Endrulat stated claimant had not. Fineran then went on to explain what occurred on June 7, 2019. Endrulat reported the incident to employer's quality assurance department, who began an investigation.

Also, on June 14, 2019, claimant had an appointment with her primary care provider regarding her memory issues. The provider administered a mini-mental examination. Claimant missed only one question.

On June 17, 2019, quality services specialist Kristin Dixon interviewed claimant about the procedure on June 7, 2019. Claimant reported the first injection of contrast material infiltrated into the patient's body tissue and she had the patient examined by the emergency department. Claimant reported that she then received permission from Dr. Luebbert to give a second injection. Claimant reported the second injection and scan were successful. Claimant did not report the third injection and scan to Dixon.

Claimant had not been disciplined for similar conduct in recent history.

On July 16, 2019, claimant saw a second doctor regarding her confusion and memory loss. The doctor administered a different mental examination. Claimant answered 26 out of 30 questions correctly. Claimant has been scheduled to see a neurologist for further examination.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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 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 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). 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).

In this case, claimant acted outside the scope of her practice when she administered the third injection of contrast to the patient without first obtaining a doctor's order. Claimant was aware or should have been aware the third injection was outside the scope of her practice. Although claimant was likely experiencing some fatigue as a result of her recent health issues, the medical evidence presented does not establish the third injection can be attributed to confusion or memory loss. Claimant explained to Fineran that she was administering a third injection and chose to go forward even after Fineran called her decision into doubt. Claimant failed to complete an incident report on the infiltration or reflect the incident in the patient's chart. That may have been due to simple negligence, but the fact that claimant then had the first two scans deleted and was untruthful with the quality services specialist about what occurred indicates claimant was attempting to cover up her actions. Employer has established claimant acted in deliberate disregard of employer's and the patient's interest. Claimant's actions amount to misconduct, even without prior warning.

**DECISION:**

The July 11, 2019, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Decision Dated and Mailed

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