

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KELLIJAYNE RUDBECK
Claimant

GENESIS HEALTH SYSTEM
Employer

APPEAL 19A-UI-08732-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/06/19
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

On November 6, 2019, the claimant filed an appeal from the October 30, 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 December 2, 2019. Claimant participated personally and was represented by attorney Michael McCarthy. Employer participated through nurse manager Penny Jagers and human resources coordinator Nicki Lear. Claimant's Exhibit 1 was 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 August 4, 2008. Claimant last worked as a part-time patient care technician. Claimant was separated from employment on October 2, 2019, when she was terminated.

Employer has a corrective action policy. It provides for progressive discipline and states that four corrective actions within one year will result in termination. Claimant was aware of the policy.

Claimant had three corrective actions regarding attendance during her last year of employment.

About 1.5 years ago, employer adopted a policy requiring staff members to complete Basic Life Support (BLS) training every quarter. Prior to that, the training was required annually. Claimant was aware of the change and had completed the required training in a timely manner in the past.

On approximately August 30, 2019, employer began sending daily emails reminding employees to complete the BLS training by September 30, 2019. Employer also gave a reminder of the deadline for the required training on a white board.

Employer did not notify employees they would be terminated for failing to complete the training by the deadline.

By September 30, 2019, claimant had not completed the training.

On October 2, 2019, employer terminated claimant's employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason.

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.

The employer has the burden to prove the claimant was discharged for job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer made the correct decision in ending claimant's employment, 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). Misconduct justifying termination of an employee and misconduct warranting denial of unemployment insurance benefits are two different things. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

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 is not 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).

A determination as to whether an employee’s act is misconduct does not rest solely on the interpretation or application of the employer’s policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the incident under its policy.

In this case, employer terminated claimant for failing to meet an education requirement. The conduct for which claimant was discharged was merely an isolated incident. Claimant had never been previously disciplined for failing to complete training and her conduct was not in deliberate disregard of employer’s interests.

Claimant had previously been disciplined for attendance, but absenteeism is not similar to failing to complete an education requirement. Employer’s simple accrual of a certain number of warnings counting towards discharge does not establish repeated negligence or deliberation and is not dispositive of the issue of misconduct for the purpose of determining eligibility for unemployment insurance benefits.

Employer failed to establish claimant was terminated for misconduct.

DECISION:

The October 30, 2019, (reference 01) unemployment insurance decision is reversed. Claimant was separated 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

December 4, 2019
Decision Dated and Mailed

cal/scn