

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DESIRAI N WRIGHT
Claimant

APPEAL 17A-UI-01385-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**HEARTLAND EMPLOYMENT SERVICES
LLC**
Employer

**OC: 05/01/16
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the February 2, 2017 (reference 06) unemployment insurance decision that disallowed benefits based upon claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on February 28, 2017. The claimant, Desirai N. Wright, participated personally. The employer, Heartland Employment Services LLC, did not participate.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The facts are undisputed in this matter. Claimant was employed full-time as a certified nursing assistant ("CNA"). This employer operates a nursing home. Claimant was employed from September 1, 2016 until January 5, 2017 when she was discharged from employment. Claimant's job duties involved caring for residents. Candace was her immediate supervisor.

On January 5, 2017 claimant came to work as scheduled and the location where she was supposed to work was changed. Claimant was scheduled to work with a resident who had previously filed false complaints against her and with another resident who had bed bugs. Claimant had previously requested to be placed in a location where she did not have to work with the resident who had bed bugs. She was told by the scheduler that she was placed in a different hallway. She had also been told by her supervisor that she would be placed in a different hallway where the resident who made false accusations against her was not residing.

Claimant brought her concerns to her supervisor's assistant, Brenda. Brenda argued with her and told her she would be working in the hallway that these two residents were located in. Claimant became upset and did use one word of profanity during the conversation. Claimant did not use any threats of violence toward Brenda. This argument occurred in an area away

from residents. Claimant continued working in her shift until Brenda later told her to go home for the day. Claimant left the shift as instructed and saw Candace in the parking lot. Claimant explained to Candace that she had been sent home for the day. Claimant was then discharged by telephone later that day when Candace called her.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed. As a preliminary matter, I find that the Claimant did not quit. Claimant was discharged from employment.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or

disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Further, the employer has the burden of proof in establishing disqualifying job misconduct. *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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* 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).

In this case, claimant's actions were not misconduct. She did not argue with Brenda in front of residents or use any threats of violence. If anything her actions were an isolated incident of poor judgment and claimant is guilty of no more than "good faith errors in judgment." 871 IAC 24.32(1)(a). Instances of poor judgment are not misconduct. *Richers v. Iowa Dept. of Job Services*, 479 N.W.2d 308 (Iowa 1991); *Kelly v. IDJS*, 386 N.W.2d 552, 555 (Iowa App. 1986). Her actions were not an intentional and substantial disregard of the employer's interest which rises to the level of willful misconduct. As such, benefits are allowed.

DECISION:

The February 2, 2017 (reference 06) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

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