IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

WILLIE CURRY Claimant **NETWORK IMAGING SOLUTIONS LLC** Employer	**APPEAL 21A-UI-03166-DB-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 12/13/20** **Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the January 11, 2021 (reference 01) unemployment insurance decision that denied benefits based upon claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on March 17, 2021. The claimant participated personally. The employer participated through witness Ronda Deeg. The administrative law judge took official notice of the claimant's unemployment insurance benefits records. The hearing was consolidated with Appeal No. 21A-UI-03165-DB-T.

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 assembler. He was employed from November 12, 2018 until June 4, 2020. His immediate supervisor was Sean Sparks.

On June 4, 2020, the claimant presented a doctor's note to Mr. Sparks because he had been off work for a period of time. He was off work due to illness on May 27, 2020; May 28, 2020; May 29, 2020; June 1, 2020; June 2, 2020; and June 3, 2020. Claimant was ill with pneumonia. He did report his absences from work to his employer for each of those dates except on June 3, 2020, when he was a no call no show.

When he turned in his doctor's note, Ms. Deeg believed that the date of June 4, 2020 that was listed on it looked like it had been altered. Ms. Deeg requested that the doctor fax the note directly to her, which it did. When she received the note directly from the doctor, it stated that the claimant had approval to be off work on June 1, 2020 and June 2, 2020 due to illness but could return to work on June 3, 2020. The note that the claimant presented to the employer stated that he could be off work June 1, 2020 and June 4, 2020.

The note the claimant presented stated in pertinent part:

"To whom it may concern: It is my medical opinion that Willie Curry be excused from work 06/01/2020 and 06/04/2020. He may return on 06/03/2020. If you have any questions or concerns, please don't hesitate to call."

The note that the doctor faxed to the employer stated:

"To whom it may concern: It is my medical opinion that Willie Curry be excused from work 06/01/2020 and 06/02/2020. He may return on 06/03/2020. If you have any questions or concerns, please don't hesitate to call."

Ms. Deeg concluded that the claimant altered the 06/02/2020 date to 06/04/2020 on the note he turned into the employer. Claimant told Mr. Sparks that was the note that he got from the doctor. Claimant was discharged from employment for falsification of documentation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Claimant was discharged from employment. As such, 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).

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.

Iowa Admin. Code r.871-24.32(8) provides:

> (8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

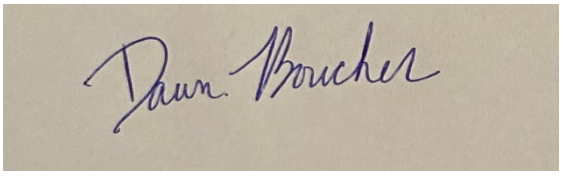
In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id*.

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds that the claimant's testimony that he did not falsify the doctor's note is not credible. In both notes they indicate that the claimant may return to work on June 3, 2020. Claimant did not return to work on June 3, 2020 and was a no call no show that day. Claimant had no logical explanation why the doctor would instruct him in the note to be off work on June 1, 2020 and June 4, 2020, but allow him to work a day in between on June 3, 2020.

Falsification of documentation is a deliberate act that constituted a material breach of the claimant's duties and obligations that arose out of his contract of employment with the employer. The employer has established that the claimant was discharged for a current act of substantial misconduct, and as such, benefits are denied.

DECISION:

The January 11, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for job-related misconduct. The separation from employment is disqualifying and benefits are denied until claimant has worked in and earned wages for insured work equal to ten times his weekly benefit amount after his June 4, 2020 separation date, and provided he is otherwise eligible.



Dawn Boucher
Administrative Law Judge

March 19, 2021
Decision Dated and Mailed

db/kmj

Note to Claimant

- This decision may determine you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law and if you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.

- If you do not qualify for regular unemployment insurance benefits funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance ("PUA") section of the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act") that discusses eligibility for claimants who are unemployed due to the Coronavirus.

- **You will need to apply for PUA to determine your eligibility under the program.**
  For additional information on how to apply for PUA go to:
  https://www.iowaworkforcedevelopment.gov/pua-information.

- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit:
  https://www.iowaworkforcedevelopment.gov/pua-information and scroll down to "Submit Proof Here." You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this

does not occur on your claim, you may repay any overpayment by visiting: https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery.

- If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.