

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SHARISSE BRISKER-STEVENSON

Claimant

ABCM CORPORATION

Employer

APPEAL NO. 14A-UI-05509-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/27/14

Claimant: Appellant (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated May 15, 2014, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on June 17, 2014. Claimant participated personally. Employer participated by Tiffany Adams.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on April 24, 2014. Employer discharged claimant on April 25, 2014 because employee had accumulated three misconduct points in one twelve-month period of time.

In June of 2013, claimant had become frustrated with the type of cleaning a resident was requesting after she had become incontinent. Claimant used foul language and left the room so as not to escalate the situation any further. For these actions she received her first warning.

The second violation occurred in April of 2014. At or around that time, management had requested that claimant and all other employees get their picture taken for a wall of employees, and, if the employee approved, to be used in an external marketing campaign. Claimant did not want her picture taken. She did not explain the reasons for this to management, but it was not for religious reasons. Management had asked repeatedly, and in many different ways to get employee's pictures taken, but claimant avoided doing this. Management's request is seen as reasonable. Although claimant may have had a valid reason for not wanting her picture taken, by not sharing that reason with management her response was simply insubordinate to a reasonable request. This was seen as inappropriate behavior and insubordination and created a second warning.

The final action was falsely documenting the removal of a resident from bed to put them in a wheelchair such that they were not confined all day. The resident's husband had a standing request that his wife be removed at 1 p.m. daily. Claimant filled out her log stating that she had gotten the resident out of bed when in fact she had not. Claimant stated that she had prefilled out the logbook, but hadn't had the time to correct her error. When the logbook was looked at after claimant's shift, it still showed that the resident was gotten out of bed, when in fact she was not.

REASONING AND CONCLUSIONS OF LAW:

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(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.

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

(4) Report required. The claimant's statement and the 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.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. .

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning dismissal after an accumulation of three disciplinary warnings in a year. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because incorrect reporting in log books can have very negative outcomes for nursing facilities. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated May 15, 2014, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/css