

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAREN L WESTERN
Claimant

PINNACLE HEALTH FACILITIES XVII L
Employer

APPEAL 19A-UI-00231-LJ
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/02/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 4, 2019, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for violation of a known company rule. The parties were properly notified of the hearing. An in-person hearing was held in Des Moines, Iowa, on Thursday, January 24, 2019. The claimant, Karen L. Western, participated. The employer, Pinnacle Health Facilities XVII L, participated through Terry Cooper, Administrator; Michelle Leguerrier, Director of Nursing; and Katie McCleish, HR Director. Claimant's Exhibit A and Employer's Exhibits 1 through 4 were received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

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, most recently as a CMA, from January 26, 2015, until December 6, 2018, when she was discharged for resident abuse. On December 3, 2018, claimant was working with a resident and yelled at him, telling him he did not need his brief changed and she did not want to change him. Leguerrier learned about this from two staff-members who were working in the next room and overheard the yelling. After taking the staff-members' statements, Leguerrier went and spoke to the resident himself. The resident alleged that claimant yelled at him. Leguerrier then spoke with claimant, who denied she had argued with the resident. Leguerrier suspended claimant pending a full investigation, which is standard protocol for the employer. During her investigation, Leguerrier spoke to a family member of another resident who also reported hearing claimant yell at the resident. Leguerrier found the four accounts of claimant yelling at the resident more credible than claimant's denial that she was yelling. Therefore, claimant was discharged for yelling at the resident. The employer maintains a policy titled Residents Rights Under Federal Law. This document states that each resident has the right to be free from verbal abuse and has the right to dignified existence. (Exhibit 2) Claimant knew it was prohibited to yell at a resident.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

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). 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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* 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 Leguerrier's testimony more credible than claimant's testimony. The administrative law judge found Leguerrier's accounts of the conversations with the resident, the employee witnesses, and the resident family member witness believable. The administrative law judge does not believe these four witnesses coordinated their statements to get claimant in trouble. The administrative law judge does not believe claimant's statement that she did not yell at the resident.

The employer is entitled to establish reasonable work rules and expect employees to abide by them. In this case, claimant was discharged from employment for yelling at a resident. The employer presented credible testimony that multiple disinterested persons reported claimant yelling at the resident. Claimant's decision to yell at a resident about his ability to receive care from her was in deliberate disregard of the resident's rights and the employer's interests in caring for its residents and ensuring they live in an abuse-free environment. The employer has established that claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

DECISION:

The January 4, 2019, (reference 01) unemployment insurance decision is affirmed. 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.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn