

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHATRICE R. HUMPHREYS
Claimant

APPEAL 22R-UI-03721-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BICKFORD SENIOR LIVING GROUP LLC
Employer

**OC: 07/25/21
Claimant: Appellant (2)**

Iowa Code §96.5(2)a-Discharge/Misconduct
Iowa Code §96.5(1)- Voluntary Quit

STATEMENT OF THE CASE:

On September 10, 2021, the claimant/appellant filed an appeal from the September 8, 2021, (reference 01) unemployment insurance decision that denied benefits based on claimant being discharged on July 23, 2021 for violation of a known company rule. A hearing was originally scheduled for November 3, 2021. A default decision was entered for the hearing. The claimant appealed the decision to the Employment Appeal Board (EAB). On February 1, 2022, the EAB remanded the appeal to the Administrative Law Judge for hearing. The parties were properly notified about the hearing. A telephone hearing was held on March 11, 2022. Claimant participated. Employer did not call in to participate during the hearing. Administrative notice was taken of claimant's unemployment insurance benefits records.

ISSUE:

Was the separation a discharge for job-related misconduct that disqualifies claimant from receiving unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on April 9, 2016. Claimant last worked as a full-time Certified Nursing Assistant. Claimant was separated from employment on July 23, 2021, when she was discharged.

Claimant last worked for the employer approximately July 16, 2021. Claimant was notified through text messaging by her supervisor, Misty, that she should not go to work on Monday. Claimant called Misty and she informed claimant that she was suspended pending an investigation. Claimant was not told why she was being investigated and did not know what she was being accused of. On July 23, 2021, claimant was notified by the employer that she was being terminated. Claimant was not told why she was being terminated. Claimant had no prior verbal or written warnings. Claimant did not know her job was in jeopardy prior to being told she was being investigated. The employer did not appear at the hearing to present evidence of claimant's misconduct.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. *Casper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. 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). 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 impose discipline up to or including discharge for the incident under its policy.

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). Further, 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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000)(fact that claimant, who was a snowplower, had two accidents involving utility lines within three days did not constitute misconduct such as would disqualify claimant from receiving unemployment benefits; there was no evidence that claimant intentionally or deliberately damaged utility lines or violated any traffic laws, and there was uncontroverted evidence that accidents were beyond claimant's control).

In this case there was no final act of misconduct that the claimant committed that would disqualify her from receiving benefits. As such, employer has failed to prove that claimant was discharged for any current act of job-related misconduct that would disqualify her from receiving benefits. Benefits are allowed.

DECISION:

The September 8, 2021, (reference 01) 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.



Carly Smith
Administrative Law Judge

March 25, 2022
Decision Dated and Mailed

cs/scn