

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

LAVONDA M CORNWELL

Claimant

APPEAL NO. 15A-UI-04078-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EDGEWOOD CONVALESCENT HOME INC

Employer

OC: 03/08/15

Claimant: Respondent (1)

Section 96.5(2)a – Discharge

871 IAC 24.32(4) – Suspensions/Disciplinary Layoff Considered Discharge

STATEMENT OF THE CASE:

Edgewood Convalescent Home, Inc. filed a timely appeal from a representative's decision dated March 23, 2015 (reference 01) which held claimant eligible to receive unemployment insurance benefits, finding that the claimant was dismissed from work on March 4, 2015 with insufficient evidence to show misconduct. After due notice was provided, a telephone hearing was held on May 11, 2015. Claimant participated. The employer participated by Ms. Melissa Kann, Administrator.

ISSUE:

At issue is whether the claimant was suspended/discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Lavonda Cornwell was employed by Edgewood Convalescent Home, Inc. beginning July 2, 2014. Ms. Cornwell was employed as a full-time certified nursing assistant and was paid by the hour. The claimant's immediate supervisor was Sara McCoon. The claimant was placed on disciplinary suspension on March 5, 2015 and subsequently reinstated to her full-time position as a CNA on April 1, 2015. The claimant remains employed by Edgewood Convalescent Home, Inc. at the time of hearing.

Ms. Cornwell was placed on disciplinary suspension without pay, effective April 1, 2015, pending the results of an investigation in to dependent adult abuse that was initiated by an employee complaint. During the time Ms. Cornwell was off work on disciplinary suspension, she was not paid by the company and claimed unemployment insurance benefits.

The claimant was reinstated to her full-time job after an independent investigation determined that the claimant had not engaged in dependent adult abuse and that the allegations were "unfounded."

Edgewood Convalescent Home, Inc. utilizes a policy of placing employees, whom are being investigated for potential dependent adult abuse, on unpaid suspension pending the outcome of each investigation. Employees are aware of the policy and the policy apparently provides for reinstatement of an employee if the investigation shows that the allegations are unfounded but does not have a provision for providing retroactive pay for the time missed.

REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code 871 24.32(4) provides that when an individual is placed on disciplinary suspension or disciplinary layoff by an employer, it is considered the same as a discharge for the purposes of the administration of the unemployment insurance law; and issues of misconduct on the part of the claimant are to be resolved.

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).

In discharges or disciplinary suspensions, the employer has the burden of proof to establish disqualifying conduct on the part of a claimant. See Iowa Code Section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee, may not necessarily be serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In the case at hand, an allegation of dependent adult abuse was forwarded by an employee of Edgewood Convalescent Home, Inc. and the employer's policy required that any employee being investigated is to be suspended from work without pay, pending the outcome of the third party investigation.

Ms. Cornwell was placed on disciplinary suspension effective March 5, 2015; while allegations of abuse of a dependent adult were investigated and resolved. At the conclusion of the investigation, it was determined that Ms. Cornwell had not engaged in the alleged abuse and that the allegations were unfounded. Ms. Cornwell was reinstated by the convalescent home but was not reimbursed for the time that she had been suspended by the employer, pending the outcome of the investigation.

For purposes of the administration of the unemployment compensation law, a suspension or disciplinary layoff is considered to be handled in the same manner as a discharge; requiring the determination of whether the claimant engaged in disqualifying misconduct that caused the suspension. If it is determined that the employee engaged in disqualifying conduct, the claimant is disqualified from the receipt of unemployment insurance benefits for that time that they may have been suspended or disciplinarily laid off. Adversely, if it is determined that the employee did not engage in disqualifying conduct in connection with his or her work that caused the suspension, then the claimant is eligible to receive unemployment insurance benefits for the time that they are off work and not being paid by the employer.

In the case at hand, the evidence establishes that Ms. Cornwell did not engage in intentional disqualifying misconduct for the incident that was investigated. Because the claimant had been required to be off work through no fault of her own and was not paid by the employer, she properly claimed and received unemployment insurance benefits for those weeks; the employer's account is chargeable. The issue is not whether the employer had a policy providing for the unpaid suspension of employees being investigated or whether the employer made a correct decision in suspending the claimant pending the outcome of the investigation. If the employer fails to meet its burden of proof to establish job-related misconduct as the reason for the suspension without pay or separation, the employer incurs potential liability for unemployment insurance benefits related to the suspension from work.

In as much as the record establishes the claimant engaged in no potential disqualifying misconduct and the allegations of dependent adult abuse were determined to be unfounded; the claimant engaged in no disqualifying misconduct and is qualified to receive unemployment insurance benefits, providing she meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated March 23, 2015 (reference 01) is affirmed. The claimant was dismissed (suspended) under non-disqualifying conditions. Unemployment insurance benefits are allowed, providing that the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

can/can