

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

Claimant	APPEAL 15A-UI-06218-SC-T
Employer	ADMINISTRATIVE LAW JUDGE DECISION
	OC: 05/03/15 Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 20, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination he was discharged for dishonesty related to his employment. The parties were properly notified about the hearing. A telephone hearing was held on July 1, 2015. Claimant participated personally. Employer Care Initiatives was represented by a representative of Talx/Equifax and participated through the Administrator of Northwest Specialty Care and Director of Nursing. Employer's Exhibit 1 was received and admitted into evidence with no objection.

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: The claimant was employed full-time as a Certified Nursing Assistant (CNA) from January 21, 2014, and was separated from employment on May 6, 2015, when he was terminated. One of claimant's job duties involves transferring residents using a Hoyer lift. According to the employer's policies and procedures, two staff members are needed when transferring a resident with the Hoyer lift.

On April 28, 2015, the claimant was waiting for his partner before transferring a resident into bed using the Hoyer lift. Unbeknownst to him, his partner was delayed. The claimant asked a family member of another resident to watch the resident, who was sitting in her wheelchair, while he sought assistance of another staff member. The family member declined to watch the resident. The claimant was able to locate the Charge Nurse who assisted him in transferring the resident.

The family member reported to the employer that the claimant had requested her assistance in transferring a resident. She stated she had already been "talked to" about assisting in transfers for her family member who was a resident so she knew that was not acceptable. She reported

the resident that claimant was assisting was already on the Hoyer lift, but had not been transferred into bed.

As a result of the family member's report, the employer conducted an investigation into the incident by interviewing the claimant. The claimant explained during the interview that the family member misunderstood, he just wanted her to watch the resident while he got assistance for the transfer. The employer did not interview any other employees regarding the incident. It determined claimant was being untruthful and was not properly using the Hoyer lift when transferring a resident. The claimant had previously received a documented verbal warning for not properly transferring a resident in August 2014. The employer terminated the claimant's employment.

REASONING AND CONCLUSIONS OF LAW:

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

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 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.

When the record is composed in part of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. Iowa Dep't Human Servs.*, 461 N.W.2d 603, 607 (Iowa Ct. App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14 (1). In making the evaluation, the fact-finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608.

The decision in this case rests, at least in part, upon the credibility of the parties. The employer did not present a witness with direct knowledge of the situation on April 28th to support its contention that the claimant failed to properly utilize the Hoyer lift or lied about his actions related to that incident. No request to continue the hearing was made and no written statement of the individual was offered. Mindful of the ruling in *Crosser, id.*, and noting that the claimant presented direct, first-hand testimony while the employer relied upon second-hand reports, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer.

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 claimant denied engaging in the conduct of which he was accused. He claims he had not begun using the Hoyer lift at the time he spoke with the family member. The employer relied upon the verbal statement of the family member when making the determination that claimant incorrectly used the Hoyer lift and lied about doing so. There was no additional evidence collected or provided to support that determination. The only evidence provided during the hearing to refute claimant's version of the incident is the hearsay testimony of the Administrator and Director of Nursing about what the family member reported. The employer has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

DECISION:

The May 20, 2015, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/pjs