

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAYDEN MOELLER
Claimant

FRIENDS OF FAITH RETIREMENT HOMES
Employer

APPEAL 20A-UI-09643-HP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2) – Discharge Due to Misconduct

STATEMENT OF THE CASE:

Claimant Jayden Moeller filed an appeal from an August 5, 2020 (reference 01) unemployment insurance decision that denied benefits based upon her discharge from employment by Friends of Faith Retirement Homes (“Friends of Faith”). Notices of hearing were mailed to the parties’ last known addresses of record for a telephone hearing scheduled for September 22, 2020. Moeller requested the hearing be rescheduled. The request was granted and the hearing was held on October 1, 2020. Attorney Tim Luce represented Moeller. Moeller appeared and testified. Tammy Steege appeared and testified on behalf of Friends of Faith. Alison Henkle also appeared on behalf of Friends of Faith, but did not testify. Exhibit 1 was admitted into the record. I took administrative notice of the claimant’s unemployment insurance benefits records maintained by Iowa Workforce Development.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?

FINDINGS OF FACT:

On August 11, 2016, Moeller commenced full-time employment as a resident assistant for Friends of Faith. Friends of Faith operates an assisted living facility where Moeller worked. Moeller assisted residents with activities of daily living, passed medications, and provided caregiving. Steege was her immediate supervisor.

Friends of Faith has a cell phone usage policy, which provides, “[w]ith the exception of emergencies, use of cell phones while on duty for personal reasons is strictly prohibited.” (Ex. 1) The cell phone usage policy is contained in the employee handbook. Moeller acknowledged she received a copy of the employee handbook on August 11, 2016.

On November 21, 2019, Steege issued Moeller a first written warning for using her cellular telephone while on the job. (Ex. 1) Steege noted employees are precluded from using their cellular telephones while clocked in and not on a break. Steege noted in November 20, 2019, a cook observed Moeller using her cellular telephone while she was in the dining room and the cook

reminded Moeller of the policy. The cook reported the incident to Steege and told her when she confronted Moeller she said, "you're not my supervisor." Steege documented, "further use of cell phone will result in further disciplinary action up to and including termination." (Ex. 1) Moeller disagreed with the discipline and noted she was texting a coworker when the cook spoke to her. (Ex. 1) The discipline noted the next step for a repeated infraction was a second written warning.

On March 23, 2020, Steege received information from staff Moeller was using her cellular telephone when she was not on a break and clocked in. Steege did not observe Moeller using her cellular telephone that day. Steege testified she terminated Moeller's employment for talking negatively about her decisions, her selective help with coworkers, having no evidence of teamwork, and for violating the cell phone usage policy. Steege called Moeller into her office and discharged her. Moeller reported she was shocked that she had been terminated. Steege had discussed any concerns with Moeller regarding talking negatively about her decisions, selective help with coworkers, or for teamwork problems before she terminated Moeller's employment on March 23, 2020. A week before her termination, Steege gave Moeller an employee appreciation gift, thanking her for being a "team player."

Steege did not provide Moeller with a copy of the second written warning she prepared on March 23, 2020, before she walked Moeller out of the building. The second written warning noted multiple staff observed Moeller on a cell phone during work when she was not clocked out on break while sitting at the front desk. Steege produced a copy of the discharge notice at hearing. It provided the next step for a repeated infraction was three days suspension or termination. Steege did not follow the form and terminated Moeller's position.

Moeller testified on March 23, 2020, she was not working at the front desk. She reported she was working with patients. Moeller reported she had worked at the front desk the week before when the administrative assistant was on vacation. She denied violating the cell phone usage policy on March 23, 2020.

REASONING AND CONCLUSIONS OF LAW:

Under Iowa Code section 96.5(2)a,

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits: . . .

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 disqualification shall continue 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.

871 Iowa Administrative Code 24.31(1)a, defines the term "misconduct" 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 Iowa Legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 558 (Iowa 1979).

871 Iowa Administrative Code 24.32(4) provides,

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.

In addition, 871 Iowa Administrative Code 24.32(8) provides:

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 bears the burden of proving the employee engaged in disqualifying misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6, 11 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262, 264 (Iowa Ct. App. 1984)

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, 808 (Iowa Ct. App. 1984) The definition of misconduct in the administrative rule focuses 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.* at 808-09. Negligence does not constitute misconduct unless it is recurrent in nature; a single act is not disqualifying unless it is indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986) Additionally, poor work performance is not misconduct in the absence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211, 213 (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. Emp't Appeal Bd.*, 616 N.W.2d 661, 666-69 (Iowa 2000) What constitutes misconduct justifying termination of an employee and what misconduct warrants a denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679, 680 (Iowa Ct. App. 1988). Instances of poor judgment are not misconduct. *Richers v. Iowa Dep't of Job Serv.*, 479 N.W.2d 308, 312 (Iowa 1991); *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 555 (Iowa Ct. App. 1986).

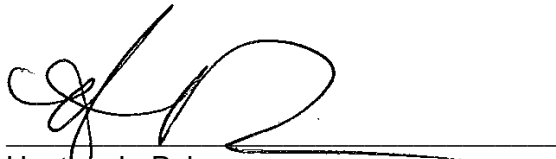
Steege testified she terminated Moeller's employment for talking negatively about her decisions, her selective help with coworkers, having no evidence of teamwork, and for violating the cell

phone usage policy. Steege did not speak with Moeller or discipline her regarding talking negatively about her decisions, selective help with coworkers, or for teamwork problems before she terminated Moeller's employment on March 23, 2020. A week before Steege had given Moeller an employee appreciation gift, thanking her for being a "team player." Steege disciplined Moeller for violating the cell phone usage policy in November 2019. Moeller reported she was using her cell phone to contact a coworker that date.

Moeller testified she was shocked when Steege terminated her employment. Steege did not observe Moeller on her cellular telephone on March 23, 2020. Moeller reported she was not even working at the front desk that day. Moreover, the second written warning Steege prepared on March 23, 2020, provided the next step was a three-day suspension or termination. Steege immediately terminated Moeller's employment on March 23, 2020. While Steege had the right to terminate Moeller, I find Friends of Faith has failed to establish any intentional and substantial disregard of its interest, which rises to the level of willful misconduct to preclude Moeller from receiving benefits. As such, benefits are allowed, provided Moeller is otherwise eligible.

DECISION:

The August 5, 2020 (reference 01) unemployment insurance decision denying unemployment insurance benefits is reversed. The employer has not established the claimant was discharged for misconduct for a disqualifying reason. Benefits are allowed provided the claimant is otherwise eligible.



Heather L. Palmer
Administrative Law Judge
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October 6, 2020
Decision Dated and Mailed

hlp/scn