

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

EILEEN F ROBERTS
Claimant

ALLEN MEMORIAL HOSPITAL
Employer

APPEAL 16A-UI-02759-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/07/16
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the February 26, 2016, (reference 01) unemployment insurance decision that denied benefits based upon her being discharged for job-related misconduct. The parties were properly notified of the hearing. A telephone hearing was held on March 28, 2016. The claimant, Eileen F. Roberts, participated personally. Witness Whitney Smith testified on behalf of the claimant. The employer, Allen Memorial Hospital, was represented by Attorney Kami Petitgoue and participated through Patient Access, Centralized Scheduling, and Patient Accounts Manager Jodi Burton and Human Resources Business Partner Jill Grover. Employer's Exhibits 1 – 7 were admitted.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as an Admitting Tech and Patient Access employee. Her employment began on June 23, 2008 and ended on February 10, 2016, when she was discharged. Her job duties included creating accurate and thorough registration records for each patient visit; obtaining demographic and financial information, as well as obtaining signatures required for successful billing; collecting patient payments; identifying patients who may be in need of financial assistance; and patient customer service. See Exhibit 1. Claimant began her employment in Patient Access and then was promoted to Admitting Tech in March of 2015. The Admitting Tech duties included preparing morning paperwork and pre-registering patients.

On February 10, 2016 claimant was discharged from employment for failure to perform duties without errors following multiple counseling and a coaching plan. See Exhibit 2. In August of 2015 the claimant was put on a coaching plan which included several expectations regarding her work performance. See Exhibit 4. These expectations included but were not limited to being faster, more efficient, limited and shorter restroom breaks, not sharing personal

information with patients, and paying more attention to details regarding the morning paperwork and patient registrations. See Exhibit 4. Following this coaching plan there were occasions when the claimant failed to find necessary doctor orders to set up a visit, used an expired order, or noted that an order was in a computer storage system when in fact it was not. See Exhibit 5.

Employer has a progressive disciplinary policy where if a worker has received previous discipline action within 12 months of the current disciplinary action and an additional disciplinary action is necessary, the next higher level of disciplinary action is given, or the most appropriate level of disciplinary action for the incident, whichever is the higher level of discipline. See Exhibit 3. The progressive levels of discipline are a first level written warning; a second level written warning; a one-day suspension without pay; and then discharge if another infraction occurs within 12 months of the suspension. See Exhibit 3. A warning will be maintained in effect for a period of not more than one year from the date of issuance, unless a third level warning is involved. See Exhibit 3.

Claimant received a third level disciplinary action on May 22, 2015 for exhibiting disrespectful behavior which violated the employer's policies. See Exhibit 6. Claimant had a first level written warning on July 31, 2014 regarding performance and failing to follow proper work procedure in finding a patient's order in the computer system. See Exhibit 6. Claimant received a second level written warning on October 15, 2014 regarding claimant being disrespectful to a co-worker in a patient area. See Exhibit 6.

On February 10, 2016 the claimant met with her head supervisor Jodi Burton, Human Resource Business Partner Jill Grover, and Lead Admitting Tech Megan Lange to discuss the coaching plan that had been put into effect in August of 2015. Megan Lange had been assigned to audit and identify any errors that the claimant made and was instructed to forward those errors to Ms. Burton and Ms. Grover. During this meeting Ms. Lange reported that claimant had continued to make errors in not locating an order on the employer's computer system. There was an error on February 3, 2016 regarding claimant's failure to find an order on the computer system; an error on January 29, 2016 for failing to put paperwork in a patient's folder; an error on January 28, 2016 for scanning an expired order; and an error on October 21, 2015 for failing to find an order on the computer system. See Exhibit 5. Following this meeting claimant was terminated for failing to perform her job duties without errors.

REASONING AND CONCLUSIONS OF LAW:

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

As a preliminary matter, I find that the claimant did not quit. Claimant was discharged from employment.

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.

Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). 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).

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). 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).

Claimant was discharged for her repeated failure to find and print appropriate paperwork in order to prepare patient registrations. An employee commits misconduct when the employee shows "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 the 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. 871 IAC 24.32(1)(a).

Claimant was put on notice in August of 2015 when the coaching plan was put in place that she needed to improve her carelessness and find the correct patient orders and paperwork for each patient's file. See Exhibit 4. Following this coaching plan the claimant committed four further errors on February 3, 2016; January 29, 2016; January 28, 2016; and October 21, 2015. See Exhibit 5.

However, reoccurring acts of negligence by an employee would probably be described by most employers as in disregard of their interests. *Greenwell v Emp't Appeal Bd.*, No. 15-0154 (Iowa Ct. App. March 23, 2016). The misconduct legal standard requires more than reoccurring acts of negligence in disregard of the employer's interests. *Id.*

Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552 (Iowa Ct. App. 1986). In this case claimant had received a written warning for the same conduct (failing to locate a patient's order) in July of 2014. Claimant had continued performance issues throughout her employment with finding the appropriate orders for patients on the computer system and getting the appropriate patient paperwork into the registration files. There is no evidence that the claimant's failure in her job performance was intentional. Rather, the evidence shows that claimant's failure in job performance was due to her inability or incapacity as it existed throughout her employment with the company.

The employer failed to meet its burden of proof of establishing disqualifying job misconduct. As such, benefits are allowed.

DECISION:

The February 26, 2016, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The benefits claimed and withheld shall be paid, provided she is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/pjs