

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

HOLLY L BULVER
Claimant

BROADLAWNS MEDICAL CENTER
Employer

APPEAL NO. 21A-UI-19499-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/27/21
Claimant: Appellant (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 23, 2021, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on October 26, 2021. Claimant participated personally. Employer participated by Lindsay Fett and Lance Schmitt. Claimant Employer's Exhibits 1-6 were admitted into evidence.

ISSUE:

Whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on June 27, 2021.

Employer discharged claimant on June 29, 2021 because claimant allegedly slapped an unruly patient after she'd been spit on.

Claimant worked as a part time nurse for employer. Claimant had a relationship with a particularly unruly pregnant patient. That relationship, and the switching at the end of a shift put claimant in a room with the patient on June 27. The patient, who has severe mental health difficulties, was acting out. She was causing a disturbance to such an extent that she had to be put into restraints.

Claimant and many other coworkers were putting patient into the restraints with claimant physically putting her body on the patient's chest. Once restrained, the patient continued to yell vulgarities at claimant and spit on claimant. Claimant responded by slapping the patient in the face.

Claimant was immediately told to leave the room by her supervisor. She left, then returned again to continue interacting with the patient in such a way that kept the patient agitated.

Employer interviewed multiple witnesses to the event – including multiple superiors of claimant and determined claimant's actions fell so far outside acceptable standards that claimant was terminated for her inappropriate actions including not properly applying restraints, slapping a patient, and returning to a room to continue arguing with an unruly patient after being told by a supervisor to leave.

At the time of hire claimant received procedures guidelines and had ongoing trainings throughout her employment. These trainings included proper restraint procedures.

Claimant stated that she did not slap the patient. Additionally she stated she was put in the difficult position of caring for a patient multiple other nurses declined to care for.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

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.

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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer

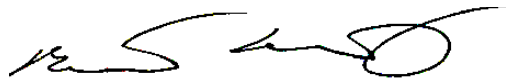
has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, Id. In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, Id. Here, the employer conducted multiple interviews with direct witnesses to the alleged events including multiple managers. All stated claimant used improper restraint procedures, slapped the patient, and came back into the room after being asked to leave.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning using improper procedures, assaulting a patient, and not following directives. The last incident, which brought about the discharge, constitutes misconduct because claimant is a nurse. Her job in the mental health ward is to care for people who may act out during episodes. This is what occurred on June 27, 2021. Claimant did not follow training, assaulted a patient, and refused to follow instructions of superiors. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits. The administrative law judge believes that the multiple violations, especially the assaulting of a patient, require a finding of misconduct and not simply a finding of an error in an isolated incident. As her actions were so far outside the realm of providing care, claimant did not need to be warned prior to her termination.

DECISION:

The decision of the representative dated August 23, 2021, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.



Blair A. Bennett
Administrative Law Judge

November 9, 2021
Decision Dated and Mailed

bab/scn