

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TAMARA L TIEDT
Claimant

PRELUDE BEHAVIORAL SERVICES
Employer

APPEAL 18A-UI-02780-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/28/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the February 19, 2018 (reference 01) unemployment insurance decision that disallowed benefits based upon claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on March 27, 2018. The claimant participated personally. The employer participated through witness Eric Bogle. Employer's Exhibits 1 – 4 were admitted.

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: Claimant was employed full-time as a Patient Account Specialist. Claimant was employed from September 22, 2015 until January 30, 2018, when she was discharged from employment. This employer operates an addiction recovery house. Claimant's job duties included checking insurance, taking payments, maintaining bed assignment, creating reports, maintaining donations, making deposits, and other clerical duties. Mr. Bogle was claimant's immediate supervisor.

This employer has written policies in place that forbid dual relationships. See Exhibit 2 and 4. Claimant received copies of these written policies. One policy provides that employees "[n]ot reveal personal information to a patient that might give the appearance of leading to a dual relationship." See Exhibit 2. Another policy provides that employees "[n]ot provide personal contact information" to patients. See Exhibit 2. The employee handbook provides that employees are expected to "ensure that working relationships are not misread or confused with friendship or other personal relationships." See Exhibit 4. It further provides that "[e]mployees may not engage in a dual relationship with a patient during active participation in services as well as the five years following termination of services. Examples of dual relationships include, but are not limited to: a personal, dating, social or sexual relationship, lending or giving money, or doing favors." See Exhibit 4.

The final incidents leading to discharge occurred sometime between November of 2017 and January of 2018. Sometime in November or December of 2017, claimant arranged two patients (one former patient and one current patient) to come to her apartment complex to pick up a mattress that she was donating to the former patient. The second incident occurred after the mattress incident wherein claimant paid a current patient \$10.00 to clean out her personal vehicle so that the patient could have enough money to pay her telephone bill. This occurred during work time and on work property.

The incidents were reported to Mr. Bogle on January 24, 2018 by another co-worker. Mr. Bogle conducted an investigation, which included interviewing the claimant. Claimant admitted to both incidents. On January 30, 2018, claimant was discharged from employment for violations of the employer's dual relationship policies.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for job-related misconduct. Benefits are denied.

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 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.

Iowa Admin. Code r.871-24.32(8) provides:

(8) 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 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). 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). The focus of the administrative code definition of misconduct is 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.* 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). A lapse of 11 days from final act until discharge when claimant was notified on fourth day that his conduct was grounds for dismissal did not make final act a "past act". *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

These were not incidents of carelessness or poor work performance. Claimant intentionally had patients travel to her apartment complex to receive a mattress she was giving to a former patient. Claimant also intentionally had a current patient clean her personal vehicle for money, which occurred during work and on work premises. It is clear that claimant's actions were intentional and they were a substantial violation of the client's policies and procedures. The employer has clear written policies regarding employees refraining from actions that lead to even the appearance of a dual relationship. Further, the employer has a clear written policy forbidding employees from lending or giving money to patients, or doing favors for patients.

The employer has a right to expect that an employee will not intentionally violate policies that are in place. There is substantial evidence in the record to support the conclusion that claimant deliberately violated these rightful expectations in this case. Accordingly, the employer has met

its burden of proof in establishing that the claimant's conduct consisted of deliberate acts that constituted an intentional and substantial disregard of the employer's interests. These actions rise to the level of willful job-related misconduct. As such, benefits are denied.

DECISION:

The February 19, 2018 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for job-related misconduct. Unemployment insurance benefits are denied until claimant has worked in and earned wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs