

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ERIC L STAHR**  
Claimant

**ONEOTA RIVERVIEW CARE FACILITY INC**  
Employer

**APPEAL 17A-UI-09939-JCT**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 08/27/17**  
**Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the September 21, 2017, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 13, 2017. The claimant participated personally. Ex-employees, Bonnie Steinberg, and Carolyn Sexton, testified on his behalf. The employer participated through Scott Marnin, administrator.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can any charges to the employer's account be waived?

**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 maintenance supervisor, beginning in 2014, and was separated from employment on August 30, 2017, when he was discharged for unsatisfactory work performance.

The employer operates a residential care facility, where the claimant worked with one full-time staff member and one part-time staff member to perform maintenance duties. The employer was responsible for ensuring safety of its residents and employees, being compliant with fire codes and OSHA, and also subject to audits from outside government agencies. As such, the

employer utilized a risk manager, who would perform internal audits to ensure the employer was not deficient when external audits were conducted.

On August 3, 2017, the employer conducted its internal walk through with Will Gibson, who identified approximately 75 issues needing attention by the maintenance department (See administrative record/fact-finding documents). The claimant was on vacation at the time and not present for the walk-through. Documented concerns included sprinkler heads being dusty, lights burned out, excessive clutter in the service hall, excessive trash, clutter in the receiving area outside, expired frosting in a refrigerator, and various signage not meeting requirements (See administrative record/fact-finding documents). Photographs from the employer of the visit show spaces where wires are hanging disorganized, cluttered boxes in the maintenance room, and visible lint behind dryers in the laundry room, which posed a fire hazard (Employer Exhibit A).

The claimant was issued a written warning in response on August 8, 2017, which stated the claimant must make immediate improvement and that he was placed on a 60 day probation (See administrative record/fact-finding documents). The claimant refused to sign the document. The claimant identified of the approximately 75 items that 10 were addressed by his assistant before he returned, 12 items belonged to other departments, 26 were personally complete and of the 20 he had assigned to his assistant, 11 were done, although the assistant documented all 20. The claimant confronted his assistant who informed him that Mr. Marnin had advised the assistant not to do the items assigned because they were "Eric's job". The claimant estimated six items were not done or needed further addressing when the employer conducted its re-visit on August 22, 2017 visit. He was subsequently discharged.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$791.00, since filing a claim with an effective date of August 27, 2017. The claimant began full-time employment effective September 15, 2017. The administrative record also establishes that the employer did participate in the fact-finding interview or make a witness with direct knowledge available for rebuttal. Scott Marnin participated.

#### **REASONINGS AND CONCLUSIONS OF LAW:**

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

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).

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 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. *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. *Id.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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 employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The administrative law judge recognizes that safety of residents is paramount to the employer's business, and failure to have a safe facility, could result in harm to residents, employees and

sanctions which could affect its ability to operate. However, the credible evidence presented does not support that the claimant willfully or intentionally neglected his job duties after the August 8, 2017 warning. When evaluating conduct to determine whether it constitutes misconduct, the focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992). In this case, the claimant identified items in other departments that were listed in the deficiencies and then divided the work between himself and his assistant, and making significant progress in a two week period between the warning and the August 22, 2017 re-check. The evidence presented does not support that the claimant purposefully did not address deficiencies. While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case.

Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading separation was misconduct under Iowa law.

Because the claimant is eligible for benefits, the issues of overpayment and relief of charges are moot.

**DECISION:**

The September 21, 2017, (reference 01) decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld shall be paid, provided he is otherwise eligible. The claimant has not been overpaid benefits. The employer's account is not relieved of charges associated with the claim.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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