

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SARAH NOSKO
Claimant

ABCM CORPORATION
Employer

APPEAL NO. 20A-UI-03773-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Federal Law PL 116-136 Sec. 2104 – Recovery of Overpayment of Federal Benefit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 30, 2020, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on May 26, 2020. Claimant participated personally. Employer participated by Kristin Delagardelle, Amber Hunt, Crystal Yoder and Kristy Puffett. Employer's Exhibits 1-6 were admitted into evidence.

ISSUE:

The issue in this matter is 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 March 26, 2020. Claimant was terminated on March 26, 2020 as a result of her insubordination and job abandonment on that day.

Claimant worked as a charge nurse LPN for employer. Claimant had worked for employer for nearly 19 years. During that time, claimant had not received write-ups for inappropriate activities, although it was noted that claimant had an aggressive style.

It was additionally stated that on more than one occasion, claimant had asked for and been granted permission to leave work in the middle of the day as claimant became very stressed over occurrences at work. When these events occurred, claimant spoke with the director of nursing, had approval prior to leaving, handed over necessary keys and filled out forms, locked the medication cart she was operating, and ensured that no meds had been left out.

On March 26, 2020 claimant became frustrated over a number of events at work. She believed employer had decided not to test a patient for COVID whom she believed should have been

tested. She could not gain access to the N-95 masks immediately upon the start of her shift as they were locked in a room where claimant did not have access. A housekeeper shared frustration about being asked to reorganize a possible COVID-infected patient's room without proper gear, and claimant had heard complaints from a CAN about being required to weigh a patient who did not desire to be weighed.

Claimant violently opened the door of the Director of Nursing to air her complaints. She slammed the door – unintentionally – into the administrator, and yelled at the director of nursing for forcing a CAN to weigh someone who didn't want to be weighed. She then threw her med keys at the DOR and told her, "I don't want to fucking be here," and walked out. When the DOR called for claimant to return, she refused, gathered her purse, and walked out.

At the time claimant left, there were still over three hours remaining on her shift. Claimant did not ask permission to leave as she'd done in the past, did not lock up the med cart she'd been in control of, did not fill out proper paperwork, left meds on top of the cart, and did not clock out from her shift. Employer stated that they believed claimant had quit.

Claimant stated that she called into work before her next shift to find out where she stood with employer. Later claimant texted the administrator to ask if she was fired or expected to work. The administrator stated that it was believed that claimant quit. Otherwise claimant was terminated as a result of her actions.

Employer cited the employee handbook claimant signed for and received as a reason for the termination. Said handbook detailed serious incidents that could require immediate termination. Included in those acts was insubordination, failing to notify employer to be excused from work, and using profanity. Claimant had not received warning for these actions.

REASONING AND CONCLUSIONS OF LAW:

The claimant in this matter knew procedures to follow had she experienced stresses that were too great for the day. She'd followed correct procedures in the past, but followed none of those correct procedures on March 26, 2020 when she abandoned her shift. Whether claimant's actions are looked at as a quit occurring when she left in the middle of her shift, or in the alternative as a job abandonment and insubordination that led to claimant's termination, in either case, benefits will be denied.

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.

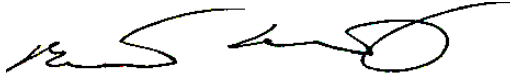
The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning job abandonment and insubordination. Claimant abandoned her job when she left work without consulting with employer and without finishing the tasks she knew she needed to complete prior to leaving. Claimant was insubordinate when employer asked claimant to return and she refused to do so.

The last incident, which brought about the discharge, constitutes misconduct because claimant's swearing, refusing to listen to her superior, abandoning her shift, and abandoning an unlocked medicine cart were inherently disrespectful, dangerous, and not in the company's interests. 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.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION:

The decision of the representative dated April 30, 2020, 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

May 28, 2020
Decision Dated and Mailed

bab/scn