

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**TERA HAMANN**  
Claimant

**APPEAL 21A-UI-15438-AD-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BROADLAWNS MEDICAL CENTER**  
Employer

**OC: 04/11/21**  
**Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

On July 9, 2021, Broadlawns Medical Center (employer/appellant) filed an appeal from the July 1, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding claimant was dismissed from work on April 11, 2021 without a showing of misconduct.

A telephone hearing was held on August 31, 2021. The parties were properly notified of the hearing. Employer participated by HR Director Lindsay Fett. Acute Care Administrator Lance Schmitt participated as a witness for employer. Tera Hamann (claimant/respondent) participated personally.

Employer's Exhibits 1-7 were admitted. Official notice was taken of the administrative record.

**ISSUE(S):**

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant was hired as a full-time staff nurse. Claimant's first day of employment was July 24, 2017. Claimant's immediate supervisor was Schmitt. The last day claimant worked on the job was April 11, 2021. Claimant resigned in lieu of discharge on April 12, 2021.

Claimant received a written disciplinary notice on February 27, 2021, which noted she had a pattern of tardiness. The notice warned claimant that continued occurrences may result in discharge. Claimant was tardy for approximately 40 percent of her shifts in the months leading up to her resignation.

Claimant received another written disciplinary notice on March 1, 2021, which outlined concerns that claimant was not completing duties and documentation in a timely and detailed manner. This notice also warned further issues may lead to discharge.

Claimant received a third written disciplinary notice on March 12, 2021, which noted claimant was again tardy on March 11 and 12, 2021. This notice warned claimant that her job was in jeopardy and she was being placed on probation.

Despite these warnings, claimant continued to report late to work. She was late on March 27, March 29, April 3, April 4, and April 11, 2021.

Claimant also continued to have issues with documenting in a timely and detailed manner. Employees in claimant's position are expected to complete documentation in real time. On April 4, 2021, claimant did not complete documentation properly before going home and left an incomplete report for nursing staff. She had to return to work the following day to complete the documentation. This resulted in medication not being properly administered.

Claimant met with Schmitt on April 12, 2021 and was given the option of resigning or being discharged. She chose to resign at that time.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons set forth below, the July 1, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding claimant was dismissed from work on April 11, 2021 without a showing of misconduct is REVERSED.

As an initial matter, the administrative law judge finds claimant's separation was not voluntary. This is because she was compelled to resign when given the choice of resigning or being discharged. This matter must therefore be analyzed as a discharge rather than a voluntary quit. See Iowa Admin. Code r. 871-24.26(21).

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 provides in relevant part:

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).

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). 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). The focus is on deliberate, intentional, or culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman, Id.* In contrast, 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. *Newman, Id.*

When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). However, conduct asserted to be disqualifying misconduct must be both specific and current. *West v. Emp't Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

The administrative law judges finds employer has carried its burden of proving claimant is disqualified from receiving benefits because of a current act of substantial misconduct within the meaning of Iowa Code section 96.5(2). Claimant is therefore disqualified from benefits from the date of separation.

Claimant received disciplinary notices on three occasions in the approximately 45 days leading up to her discharge. These warned her that her job was in jeopardy if her attendance and performance did not improve. Claimant continued to have attendance and performance issues after these warnings. She was discharged for these reasons. The administrative law judge finds claimant's failure to address these issues, despite these multiple warnings, constitutes "carelessness or negligence of such degree of recurrence...to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer."

The administrative law judge notes that claimant asserts that her discharge was due to targeting and unfair treatment by employer and coworkers. However, she provided only scant evidence in support of this assertion, and she does not deny that she continued to be tardy after the warnings and failed to complete documentation in the most recent incident.

The administrative law judge specifically finds without merit claimant's assertion that employer targeted and ultimately discharged her because it did not like her work in establishing a lactation program. Employer allowed her to establish the program; the program received high praise; and the program remains in existence after her termination. It would make little sense for employer to discharge her due to the successful program and then keep the program in place if that was indeed the reason for her discharge.

**DECISION:**

The July 1, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding claimant was dismissed from work on April 11, 2021 without a showing of misconduct is REVERSED. Claimant's separation from employment was disqualifying. Benefits must be denied. This disqualification shall continue until claimant has earned wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is not otherwise disqualified or ineligible at that time.



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Andrew B. Duffelmeyer  
Administrative Law Judge  
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Fax (515) 478-3528

September 09, 2021  
Decision Dated and Mailed

abd/ol

***Note to Claimant:***

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for regular unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.