

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHARON RISDAL
Claimant

LUTHERAN SERVICES IN IOWA INC
Employer

APPEAL 20A-UI-09096-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/31/20
Claimant: Respondent (1)

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 Participation in Fact-Finding Interview

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the July 22, 2020 (reference 01) unemployment insurance decision that allowed unemployment insurance benefits to the claimant following her discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on September 16, 2020. The claimant, Sharon Risdal, did not participate. The employer, Lutheran Services in Iowa Inc., participated through witnesses Roxanne Mills and Ashley Ross. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

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: Claimant was employed full-time beginning May 4, 2018. She worked as a nursing coordinator. She was responsible for coordinating the health care and medical services for the children at the facility.

In February of 2020, the claimant was given a Performance Improvement Plan (PIP) which instructed her that she had violated the employer's policies regarding personal use of company property, including a vehicle, gas card and cell phone. At some point in time, Ms. Mills had spoken to the claimant about ensuring that medication was destroyed on a weekly basis, in front of a witness. A procedure for the claimant to destroy medications weekly was put in place; however, the claimant's destruction of medication from February through May of 2020 was sporadic and not weekly. No discipline, prior to her discharge, was given to the claimant regarding her missing weekly destruction appointments.

The claimant was also consistently late for TB tests that were being administered and evaluated with new employees. These were scheduled for Monday mornings and Wednesday mornings respectfully. The claimant was tardy to several meetings which resulted in the delay of onboarding for new employees. No written discipline was given to the claimant regarding her tardiness to these meetings.

In May, the employer determined that the claimant was in violation of the PIP when the medications were not destroyed on a weekly basis and because the claimant had been tardy to the TB tests and evaluation meetings. Claimant was discharged as a result of those incidents. Claimant struggled in her performance of job duties from the beginning of her employment, many times not following through on completing tasks as assigned. The PIP was the only discipline given to her.

The employer participated in writing in the fact-finding interview by completing the interview worksheet provided to it by Iowa Workforce Development. The employer answered questions in the worksheet about the claimant's discharge from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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.

The employer has the burden of proof in establishing disqualifying job-related 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). 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.

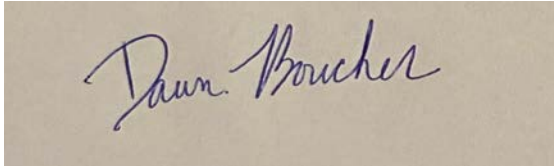
Such misconduct must be “substantial.” *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; 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).

Claimant was discharged for her tardiness to TB tests and evaluations and failing to destroy medications on a weekly basis. The PIP only disciplined her for her use of company property for personal benefits. No previous warnings were given to the claimant about the final issues she was discharged for that would have put her on notice that her job was in jeopardy if she failed to complete the assignments or that she was tardy for appointments.

Inasmuch as employer had not previously warned claimant about the issues leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer has failed to establish any intentional and substantial disregard of the employer's interest which rises to the level of willful misconduct. As such, benefits are allowed, provided the claimant is otherwise eligible. The employer may be charged for benefits paid. Because benefits are allowed, the issues of overpayment of benefits is moot.

DECISION:

The July 22, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The employer's account may be charged for benefits paid.



Dawn Boucher
Administrative Law Judge

September 18, 2020
Decision Dated and Mailed

db/scn