

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MONICA J BAIER
Claimant

APPEAL 15A-UI-03780-KC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BROADLAWNS MEDICAL CENTER
Employer

**OC: 03/08/15
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 24, 2015 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 30, 2015. The claimant participated. The employer participated through: Krissy Harlow, Director of Clinics; Staci Little, Clinic Manager; and Julie Kilgore, Vice President. Exhibit One was received into evidence.

ISSUE:

Was the claimant discharged for disqualifying, work-related misconduct?

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 surgical technician beginning on May 19, 2014 and was separated from employment on March 12, 2015 when her employment was terminated by the employer.

The claimant received written and oral feedback from her supervisors. In August 2014, the claimant requested a meeting with Harlow regarding work issues. During a meeting on August 19, 2014, she received a written memorandum of understanding that indicated she refused to call an attorney when directed to do so by her supervisor. In the present matter, both the supervisor and claimant testified to having called the attorney in question. During the meeting held in August 2014, a supervisor told the claimant that her use of a personal cell phone in the clinical area was not permitted. The claimant had received the employer's written policy about private cell-phone usage at the time of hire. She declined to sign the document acknowledging that she had received and understood the document and related in-person meeting. On November 25, 2014, at her six-month evaluation, the claimant was warned about being abrupt with patients and needing to be proactive instead of waiting for direction. She was placed on performance probation that could result in disciplinary action up to termination (Exhibit One).

There were two additional incidents which the employer identified as unprofessional. On March 6, 2015, the claimant was observed by supervisors to be unprofessional during a television production of a promotional video about the hospital in that she did not move around the production staff while she was providing patient care. Kilgore also observed the claimant: fail to respond to requests from filming production staff about phone usage; roll her eyes; and eat yogurt in the clinical area. National accreditation standards prohibit food consumption by staff in clinical patient care areas.

On March 11, 2015, Harlow told the claimant to put her personal cell phone away in the clinical area and the claimant complied. On March 12, 2015, Little and Harlow met with the claimant. She was told that there were issues with her personal cell-phone use, eating, and "service excellence." She received a document written by Little stating that the claimant's employment was terminated effective March 12, 2015 due to ongoing issues with "service excellence" and professional conduct (Exhibit One).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). The claimant was repeatedly advised to follow instructions of supervisors, to avoid cell-phone use in the clinical area, to be less abrupt with patients, and to avoid eating in the clinical area in front of patients. The issue regarding eating food in the clinical area relates to a national hospital accreditation standard.

Failure to sign a written reprimand acknowledging receipt constitutes job misconduct as a matter of law. *Green v Iowa Dep't of Job Serv.*, 299 N.W.2d 651 (Iowa 1980). In this case, the claimant refused to sign documents submitted to her by members of management on two occasions: August 19, 2014 and March 12, 2015 (Exhibit One). Both documents were assessments of job performance and the need to make specific changes.

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *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).

The employer has presented substantial and credible evidence that the claimant, after having been warned, engaged in deliberate conduct in violation of company policy, procedure, or prior warning. The employer's request was not unduly burdensome or unreasonable. Benefits are denied.

DECISION:

The March 24, 2015 (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Kristin A. Collinson
Administrative Law Judge

Decision Dated and Mailed

kac/can