IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

CARRIE M MASTELLER Claimant **COVENANT MEDICAL CENTER INC** Employer	**APPEAL 18A-UI-01485-NM-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 01/07/18** **Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 30, 2018, (reference 01) unemployment insurance decision that denied benefits based on her discharge for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on February 26, 2018. The claimant participated and testified. The employer participated through Senior Human Resource Specialist Deborah Tyler and witnesses Tracy Dahl and April Fabert. Employer's Exhibits 1 through 5 were received into evidence.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a patient registration representative from November 30, 2015, until this employment ended on January 5, 2018, when she was discharged.

On December 27, 2017, several of claimant's coworkers approached their supervisor, Dahl, to address concerns they had with claimant's productivity. Specifically, it was reported to Dahl that claimant was gone from her work station for long periods of time without explanation, causing her coworkers to assist additional patients in her absence. Dahl and Faber called claimant into a meeting to discuss the situation. Claimant was able to provide an explanation as to why she had been away from her work area and the employer was willing to accommodate her need to periodically leave the work area, but asked she communicate to someone she was leaving so her work could be covered. After the meeting claimant approached her coworkers, in a high-traffic area, where patients were present, and asked who had gone to the supervisor. Claimant testified she did this in order to provide an explanation to the complaining individual, but that no one was interested in hearing her explanation. Claimant told her coworkers they were acting like a bunch of middle-schoolers, who went and told to the teacher.

This was not the first time claimant had engaged in this type of behavior. On September 28, 2017, it was reported to Dahl that claimant had taken her assigned work to her coworker and given the directive that the coworker should complete her work because she was working on another project. The coworker did not appreciate being given a directive by claimant. Dahl met with claimant and told her the manner in which she spoke to her coworker was not acceptable. She explained if claimant needed help with her work she should ask nicely rather than direct. Claimant was upset and complained that her coworker was tattling on her before getting up and slamming the door. Claimant then went and confronted her coworker about complaining to Dahl. Claimant later asked to go home for the remainder of the day and was issued a verbal warning. In the verbal warning Dahl advised claimant she could not speak to her coworkers or supervisors in a disrespectful or rude manner. Dahl did not specifically speak to claimant about confronting her coworker for reporting her to a supervisor, nor was claimant ever advised that further conduct of this nature could result in termination.

On January 3, 2018 Dahl learned about the December 27 confrontation following her meeting with the claimant after she received an email from one of claimant's coworkers describing the situation. Dahl then brought the situation to the attention of Tyler. In reviewing claimant's employee file it was noted that, in addition to the September 28 verbal warning, claimant's June 2017 performance evaluation identified improving her attitude and professionalism with coworkers as an area for improvement from claimant. (Exhibit 2). It was also determined that claimant's behavior on December 27 had violated the employer's anti-harassment and retaliation policies. (Exhibits 4 and 5). Claimant received a copy of both policies upon her hire. (Exhibit 3). The decision was then made to discharge claimant from employment. (Exhibit 1).

Claimant testified she was aware of the anti-harassment and retaliation policies, but did not realize her conduct on December 27 would violate those policies. Claimant had no prior warnings for violating those policies and was not advised in the December 27 meeting that she could not speak to her coworkers about the situation. Claimant testified, had she known this conduct could lead to her being discharged, she would not have engaged in the behavior.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 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.

871 IAC 24.32(1)a provides:

> Discharge for misconduct.
>
> (1) Definition.
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> 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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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

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. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

The conduct for which claimant was discharged was an isolated incident of very poor judgment. Claimant's decision to ask her coworkers who reported her to the supervisor following her meeting with Dahl was certainly ill-advised. However, claimant provided credible testimony that she did not realize these actions could be considered retaliation or would result in her discharge from employment. Though claimant had engaged in similar behavior before and received at least one verbal warning regarding the manner in which she spoke to her coworkers, she had no prior disciplinary action related to potentially retaliatory behavior and had never been warned her job was in jeopardy. 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. Training or general notice to staff about a policy is not considered a disciplinary warning. Inasmuch as employer had not previously warned claimant about the issue 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.

DECISION:

The January 30, 2018, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Nicole Merrill
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs