IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

KRISTEN S MCINTYRE Claimant **THE UNIVERSITY OF IOWA** Employer	**APPEAL 21A-UI-08944-ML-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 02/14/21** **Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the March 24, 2021 (reference 01) unemployment insurance decision that found claimant was not eligible for benefits based upon claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on May 27, 2021. The claimant, Kristen McIntyre, participated personally. Witness Lori Posey also provided testimony on claimant's behalf. The employer, The University of Iowa, participated through Human Resources Business Analyst Jessica Wade.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?
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 part-time as a Human Resources Coordinator. Claimant was employed from February 7, 2000, until February 16, 2021, when she was discharged from employment for failing to meet performance expectations. Claimant's immediate supervisor was Brandi Carr.

The final incident which led to claimant's discharged occurred on February 10, 2021, when claimant did not attend a one-on- one meeting with her supervisor, Ms. Carr. According to the employer, this was the third one-on-one meeting the claimant had missed. The employer did not provide the dates of the other two meetings claimant missed. Moreover, the employer did not know if the other two meetings were scheduled to occur in 2020. Claimant was unaware that the employer took issue with her attendance at the one-on-one meetings. According to claimant, she never intentionally missed any of the one-on-one meetings, and the meetings she did miss – with the exception of the February 10, 2021, meeting – she was able to reschedule and attend.

The employer conducted an investigation during the week of February 8, 2021. Through the investigation, the employer discovered and outlined three main concerns. First, claimant was not recognizing employees for their services awards throughout 2020. Second, there was an issue with claimant failing to timely respond to an employee's timecard inquiry through the university's employee labor management system (ELMS). The previously discussed one-on-one meetings was the third and final issue discovered through the employer's investigation. At hearing, claimant testified she was never reprimanded for missing one-on-one meetings with her supervisor or for the ELMS issue. Claimant further testified that the awards and recognition issue was not brought to her attention until after the February 8, 2021, investigation.

Ms. Carr and Senior HR Representative Keith Clausen discussed the above three issues with claimant during her termination meeting on February 11, 2021. Claimant would later receive documents confirming her termination through the mail on February 16, 2021. The employer did not provide what, if any, policies claimant violated prior to discharge.

Claimant underwent surgery and was restricted from working from March 4, 2021, through March 11, 2021. Claimant had requested FMLA for the March 4, 2021, surgery prior to her termination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed.

As a preliminary matter, I find that the Claimant did not quit. Claimant was discharged from employment.

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:
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> 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.
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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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(4) provides:

> (4) Report required. The claimant's statement and the 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.

871 IAC 24.32(8) provides:

> (8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. Iowa Code § 96.6(2); *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). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* 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).

Further, poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). There is no evidence that the claimant's actions had any wrongful intent.

Reoccurring acts of negligence by an employee would probably be described by most employers as in disregard of their interests. *Greenwell v Emp't Appeal Bd.*, No. 15-0154 (Iowa

Ct. App. March 23, 2016). The misconduct legal standard requires more than reoccurring acts of negligence in disregard of the employer's interests. *Id*.

In this case there was no final act of misconduct that the claimant committed that would disqualify her from receiving benefits. Although claimant missed a meeting with her supervisor on February 10, 2021, claimant credibly testified that the meetings were random, she did not intentionally miss the meeting, and she established there was a history of missing and rescheduling such meetings without consequence. The employer did not prove that claimant was in violation of any rule or policy.

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.

In the matter at hand, the employer failed to prove that the claimant acted in any deliberate way to breach the duties of obligations of her employment contract. There was no willful or wanton action or omission of claimant which was a deliberate violation or disregard of standards of behavior which the employer has the right to expect of claimant. The employer failed to prove claimant acted with 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.

I find the employer has failed to meet its burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. The employer failed to meet its burden of proof in establishing disqualifying job misconduct. Benefits are allowed.

Iowa Code section 96.4(3) provides:

> An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:
>
> 3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1)a provides:

> Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of

establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

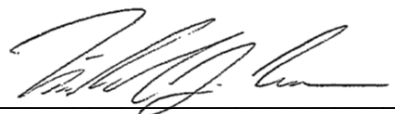
a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

The claimant has the burden of proof in establishing her ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). When employees are unable to perform work due to a medical condition, they are considered to be unavailable for work. The claimant had surgery and testified she was restricted from working March 4, 2021, through March 11, 2021. She is unavailable for work and disqualified from receiving unemployment insurance benefits for the one benefit week ending March 13, 2021.

DECISION:

The March 24, 2021 (reference 01) unemployment insurance decision is REVERSED. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

The claimant is not able and available for work for the one benefit week ending March 13, 2021.



Michael J. Lunn
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June 29, 2021
Decision Dated and Mailed

mjl/scn