

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

**SHELLE PEAK**  
Claimant

**APPEAL NO: 18A-UI-11925-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE UNIVERSITY OF IOWA**  
Employer

**OC: 11/11/18**  
**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/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the December 6, 2018, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 28, 2018. The claimant participated personally. The employer participated through benefits specialist Mary Eggenburg. Ray Haas, HR manager, and Kim Stout, revenue cycle manager, testified. Employer Exhibit 1 was admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**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: The claimant was employed part-time as an account representative for the emergency department and was separated from employment on November 12, 2018, when she was discharged for unsatisfactory performance (Eggenburg testimony).

The claimant began employment with this employer in 1984, and worked for the emergency department for the last 13 years. Her job duties included working the registration desk, as well as occasionally manning the "ED to "ED" duties, which meant she took incoming calls from other medical facilities who were en route transferring patients from their emergency rooms to the one located at the University of Iowa. These calls involved the claimant following screen prompts on her computer screen, while inputting information about the patient, and then

coordinating with the on-staff physicians and team. The claimant did not always work the ED to ED station, and stated she worked 20 hours a week, but from March 2018 until separation, she worked a total of 38 hours performing the ED to ED duties. When she had previously expressed concern about needing more experience on the station, she had been told the schedule had already been made (Claimant testimony).

Prior to the final incident, the claimant had been issued warnings on December 7, 2017 and March 6, 2018, related to attendance, and issued a final warning and suspension for low production rates in April and July 2018. She had no specific warnings related to call-handling or the ED to ED job duties.

On October 29, 2018, the claimant handled two incoming calls, which were audited by her manager. The first call lasted 36 minutes with the incoming caller being placed on hold for 30 minutes. The claimant was observed on the call (which recorded her during the hold time,) requesting help. On a second call that day, the claimant conducted a 22 minute call, with the caller being placed on hold for 20 minutes of the call. The claimant again appeared to be struggling to complete the screens. The claimant also stated she had difficulties locating the doctors for both calls, and that her coordinator for the day, was unavailable for at least one of the calls.

The employer opined the calls generally take 5-6 minutes to complete and the claimant's handling of the calls caused undue delay in care and transferring the patient. She was subsequently discharged (Employer Exhibit 1).

The administrative record reflects that claimant has received unemployment benefits in the amount of \$2,352.00, since filing a claim with an effective date of December 6, 2018. The administrative record also establishes that the employer did not participate in the December 3, 2018 fact-finding interview or make a witness with direct knowledge available for rebuttal. Ms. Eggenburg was out of the office and her co-worker who was covering for her, missed the call.

#### **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.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

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).

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. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The undisputed evidence is the claimant was discharged after poor handling of two phone calls ("ED to ED" calls) that she handled on October 29, 2018. In each of the calls, the claimant placed the caller on hold for extended periods of time, delaying transfer and care. The administrative law judge recognizes the time-sensitivity associated with care for emergency room patients. However, the credible evidence presented in this case does not support that the claimant willfully neglected or delayed the calls. Rather, the employer acknowledged the claimant could be heard during the hold times requesting help and struggling. Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979). In light of the claimant not routinely performing the ED to ED call role and previously expressing concern about inexperience with the system, the employer has failed to establish by a preponderance of the evidence that the claimant's actions were willful, deliberate or even repetitive after prior warning. The question before the administrative law judge in this case is not whether the employer has the right to discharge this employee, but whether the claimant's discharge is disqualifying under the provisions of the Iowa Employment Security Law.

While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above stated reasons, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing that the claimant's discharge was due to job related misconduct. Accordingly, benefits are allowed, provided the claimant is otherwise eligible.

Because the claimant is eligible for benefits, the issues of overpayment and relief of charges are moot.

The parties are reminded that under Iowa Code § 96.6-4, a finding of fact or law, judgment, conclusion, or final order made in an unemployment insurance proceeding is binding only on the parties in this proceeding and is not binding in any other agency or judicial proceeding. This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise.

**DECISION:**

The December 6, 2018, (reference 01) decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

jlb/scn