

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

EARLENE M HENNINGER
Claimant

CARE INITIATIVES
Employer

APPEAL 17A-UI-11207-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/24/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Earlene M. Henninger (claimant) filed an appeal from the October 27, 2017, reference 02, unemployment insurance decision that denied benefits based upon the determination Care Initiatives (employer) discharged her for violation of a known company policy. The parties were properly notified about the hearing. A telephone hearing was held on November 20, 2017. The claimant participated. Former Charge Nurse Katie Claussen participated on her behalf. The employer was represented by La Keisha Hudson of Equifax and participated through Assistant Administrator Kayla Harken, Director of Nursing Cheryl Dreyer, and Assistant Director of Nursing Emily Foster. No exhibits were offered into the record.

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: The claimant was employed full-time as a Certified Nursing Assistant (CNA) beginning on October 17, 2016, and was separated from employment on September 22, 2017, when she was discharged. The employer is an assisted care facility and provides care to dependent residents. It requires all CNAs to carry and use gait belts when transferring residents. The gait belt allows the employees to lift a resident without using any of the resident's body to lift him or her. Instead, the employee grips the gait belt while lifting a resident. If an employee fails to safely transfer a resident, it is considered a Major Type B infraction and two such violations results in discharge under the employer's policy.

The claimant had an injured arm during her entire employment. At one point, she requested an accommodation and was placed on light duty. The claimant eventually told the employer she was able to perform her job duties without accommodation as she was not earning enough money while on light duty.

On September 8, 2017, the claimant received a warning and was suspended for her first Major Type B infraction. On September 6, 2017, the claimant transferred a resident, who was

classified as a two-person assist, by herself without assistance and it resulted in the resident being placed on or falling to the floor. The claimant was told at that time any further infractions would result in discharge.

On September 20, 2017, Assistant Director of Nursing Emily Foster, who was a Nurse Manager at the time of the incident, was working with a new resident along with the claimant. While taking the new resident's weight, the claimant failed to use her gait belt and tugged on the resident's arm to assist him in standing. Foster reminded her to use her gait belt. While the claimant utilized the gait belt, she used it improperly and continued to use the resident's arm to pull him up. Foster reported the incident to several members of management. The claimant was then discharged for failing to safely transfer a resident and her second Major Type B violation.

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. Benefits are denied.

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 Administrative Code rule 871-24.32(1)a provides:

"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).

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). 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). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge attributes more weight to the employer's version of events.

The employer has an interest in ensuring dependent adults in its care are treated appropriately by staff. One important way residents are cared for includes transferring the resident without harm to the resident. The claimant's argument that she was transferring residents in a non-compliant manner due to her own injury is not persuasive. The claimant had requested an accommodation but when she did not earn enough money she told the employer she was able to perform her job functions without accommodation. The claimant had a duty to properly transfer the residents in a way that would prevent potential harm. The claimant's willful disregard of the employer's interest and repeated failure to accurately perform her job duties after having been warned is evidence of negligence or carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. Accordingly, benefits are denied.

DECISION:

The October 27, 2017, reference 02, 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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn