

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KURT A SCHWARZ
Claimant

**CENTRAL IOWA HOSPITAL
CORPORATION**
Employer

APPEAL 15A-UI-08363-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/21/15
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 13, 2015, (reference 02) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on August 17, 2015. The claimant participated personally. Although properly notified for the hearing, the employer elected not to participate. No documents were offered or admitted 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: The claimant was employed full time as a patient care technician and was separated from employment on May 28, 2015, when he was discharged.

The claimant had been employed by the employer for approximately 21 years. During this time, his job evolved from working in the emergency room, to being a patient/patient's family member's first contact. His job duties included identifying the main symptom for the patient's visit, registering the patient and placing a hospital band on the patient.

The final incident occurred when the employer received a complaint from a patient's wife about the claimant. The patient had come to the emergency room with alleged seizures and the wife of the patient was very upset. The claimant observed the patient as he worked through the registration process and based on the breathing and posture of the patient, he did not appear to be having seizures. He told the claimant's wife it did not look like seizures, in an attempt to calm her down, and while he continued to process the registration for medical care. The claimant did not delay or discourage medical care in any way. The claimant denies calling the patient a "faker" as the complaint alleged or saying he did not need medical care.

The claimant testified that no formal customer service training was provided but it was discussed at meetings and amongst employees how to best handle high stress situations. The claimant testified he often received warnings when a patient's family was unhappy or dissatisfied with the wait time even though it was the triage nurses and not the claimant who had control over what patients were seen next. The claimant did have warnings for prior complaints and believes he was on probation as a result. He was subsequently discharged.

The employer did not attend the hearing or submit any documentation in lieu of appearance for the hearing.

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.

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(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.

Iowa Admin. Code r. 871-24.32(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 unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove a claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. 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 Board, 616 N.W.2d 661, 665 (Iowa 2000).

871 IAC 24.32(8) provides: "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."

In this case, the claimant was discharged based on a customer service complaint, specifically with regard to a comment made to a patient's wife that he (the patient) did not appear to be having seizures as he was being checked in for medical treatment. The claimant credibly testified that his comment was not to suggest the patient was a faker, and denies any such reference being made, but rather, to calm the wife who was distressed, as he registered. The claimant referenced specifically that the patient was not struggling to breathe, as commonly happens with seizure victims, but his attempt to soothe the patient's wife was mistaken.

The employer did not attend the hearing and did not rebut the claimant's credible denial of calling the patient a "faker" or exercising poor customer service. The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. Crosser v. Iowa Dep't of Pub. Safety, 240 N.W.2d 682 (Iowa 1976). Mindful of the ruling in Crosser, id., and noting that the claimant presented direct, first-hand testimony, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer.

The employer has not established a current or final act of misconduct, and, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed. Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading separation was misconduct under Iowa law. Since the employer has not met its burden of proof, benefits are allowed.

DECISION:

The July 13, 2015, (reference 02) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The benefits claimed and withheld shall be paid, provided he is otherwise eligible.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/css