

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**HEATHER S WOLVERTON**

Claimant

**APPEAL 21A-UI-02042-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CORRECT CARE SOLUTIONS LLC**

Employer

**OC: 10/11/20**

**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Heather S Wolverton, the claimant/appellant, filed an appeal from the December 14, 2020, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on February 26, 2021. Ms. Wolverton participated and testified. The employer did not participate.

**ISSUE:**

Was Ms. Wolverton discharged for misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Wolverton began working for the employer on October 12, 2019. She worked as a full-time licensed practical nurse at a county jail. Her last day of work was October 15, 2020.

Ms. Wolverton's job required her to push a 90 pound cart and lift patients. From April 28, 2020 through October 27, 2020, Ms. Wolverton was on intermittent Family Medical Leave Act (FMLA) leave due to chronic health conditions. Ms. Wolverton called in most of the times when she was absent. Ms. Wolverton's condition worsened and she could not perform all of the tasks of her job, particularly pushing the cart and lifting patients. Ms. Wolverton's doctor began preparing FMLA paperwork for Ms. Wolverton to be able to request a period of continuous FMLA leave.

Ms. Wolverton submitted documentation from her mental health provider asking for an accommodation. The employer asked Ms. Wolverton for additional information. Ms. Wolverton's mental health provider began working on the additional paperwork.

Ms. Wolverton's employment was terminated on October 15. The employer told Ms. Wolverton that the reason was for multiple instances of absences and tardiness. During her employment, Ms. Wolverton had received verbal and written warnings for tardiness. By the time her employment was terminated, Ms. Wolverton had not provided the employer with a continuous

FMLA request and she had not provided the additional information from her mental health provider.

After her employment was terminated, Ms. Wolverton needed income so she took a job as a nursing assistant doing light duty. She worked through a staffing agency on assignment to a state prison from early November 2020 through the end of November. In January 2021, Ms. Wolverton took another staffing agency assignment job in a state prison. That job also involved Ms. Wolverton working as a nursing assistant doing light duty. That job ended during the week of February 22-26.

Ms. Wolverton is scheduled to have surgery on March 29, 2020. After surgery Ms. Wolverton expects to be in recovery for about six months.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes Ms. Wolverton was discharged from employment for no disqualifying reason and she is able to and available for work.

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.

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).

871 IAC 24.32(4) provides:

*Report required.* The claimant's statement and 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.

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.

In this case, the employer did not participate in the hearing and provided no evidence to establish misconduct on Ms. Wolverton's part. Ms. Wolverton agrees that she was discharged but denies that she engaged in any misconduct in connection with her employment. The employer has failed to meet its burden.

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 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, 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".

An individual claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

In this case, Ms. Wolverton is able to and available for work. Ms. Wolverton's periods of employment in November 2019 and again in January-February 2020 are evidence of her ability to and availability for work. While Ms. Wolverton may become unable to work if her surgery is held in March 2020, she is able to and available for work effective October 11, 2020.

Since Ms. Wolverton was discharged from employment for no disqualifying reason and she is able to and available for work benefits are allowed.

**DECISION:**

The December 14, 2020, (reference 01) unemployment insurance decision is reversed. Ms. Wolverton was discharged from employment for no disqualifying reason and she is able to and available for work. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



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March 8, 2021  
Decision Dated and Mailed

dz/kmj