

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BARBARA J NOREM
Claimant

BETHANY MANOR INC
Employer

APPEAL 21A-UI-24224-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/03/21
Claimant: Appellant (2)**

Iowa Code §96.5(2)a-Discharge/Misconduct
Iowa Code §96.5(1)- Voluntary Quit

STATEMENT OF THE CASE:

On October 29, 2021, the claimant/appellant filed an appeal from the October 27, 2021, (reference 01) unemployment insurance decision that denied benefits based on claimant being discharged for violation of a known company rule. The parties were properly notified about the hearing. A telephone hearing was held on December 21, 2021. The hearing was held together with appeals 21A-UI-24032-CS-T and 21A-UI-24033-CS-T and combined into one record. Claimant participated at the hearing. Employer participated through Human Resources Coordinator, Lauren Middendorf. The employer called as witnesses Director of Nursing, Rex Nelson, and Facility Administrator, Amanda Lankford. Administrative notice was taken of claimant's unemployment insurance benefits records.

ISSUE:

Was the separation a discharge for job-related misconduct that disqualifies claimant from unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on June 9, 2020. Claimant last worked as a full-time Licensed Practical Nurse. Claimant was separated from employment on October 8, 2021, when she was discharged.

Claimant worked the night shift that began on October 7, 2021. While claimant was on her shift she performed a narcotic pill count and determined that the count was off by one pill. Claimant notified the registered nurse of the discrepancy and the nurse told her they would address the issue in the morning. The next morning claimant confronted the co-worker that had performed the pill count prior to her shift and let him know that the pill count was off by one pill. A confrontation occurred between the claimant and the co-worker. The parties were yelling at each other to the point where other staff came to check on them and residents were getting upset. The verbal confrontation extended outside of at least one unit and continued into the hallway.

On October 8, 2021, Mr. Nelson performed an investigation into the incident. The employer interviewed four staff members that witnessed the incident. The employees reported that claimant followed the co-worker around and accused him of stealing narcotics. Mr. Nelson called claimant and got her statement of what occurred. Mr. Nelson determined it did not match the witness statements he had obtained.

Later that day on October 8, 2021, Mr. Nelson called claimant and notified her she was terminated. Claimant was terminated due to her disorderly conduct and for violating the respectful work environment policy. In the policy the employer notifies the employees it will not tolerate harassment or bullying between co-workers. Claimant acknowledged receipt of this policy on June 9, 2020. The claimant did not have any prior verbal or written warnings that put her on notice her job was in jeopardy if her behavior continued.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) 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.

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 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). "Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

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.

None of the witnesses that testified on behalf of the employer were present during the incident that occurred on October 8, 2021, with claimant and the co-worker. Claimant disputes that she was accusing the co-worker of stealing the narcotics. The claimant also disputes that she followed the co-worker around the building yelling at him. Claimant does acknowledge that she raised her voice after the co-worker provoked her by his behavior. Regardless of whether the employer's version of events is correct or the claimant's version of events is correct, both parties agree claimant did not have a previous verbal or written warning about her conduct or for violating the respectful work environment 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. Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

DECISION:

The October 27, 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. Any benefits claimed and withheld on this basis shall be paid.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

January 21st, 2022
Decision Dated and Mailed

cs/rs

NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits but who were unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

ATTENTION: On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa is the week ending June 12, 2021. You may be eligible for benefits incurred prior to June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.