IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

Appeal Number: 05A-UI-04653-L
OC: 03-06-05 R: 04
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the April 26, 2005, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on June 20, 2005 in Dubuque, Iowa. Claimant did participate with Jennifer Manders and Sherry Flaherty and was represented by John Nemmers, Attorney at Law. Employer did participate through Sherry McDonnell and Michelle Brown. Employer's Exhibits 1 through 5 were admitted to the hearing record. Claimant's Exhibits A through D were admitted to the hearing record.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time program assistant from November 2001 through April 1, 2005 when she was discharged for an alleged failure to comply with the written instructions on the

March 23 performance evaluation. (Employer's Exhibits 1 and 5) She was to provide a written plan to improve her communication by March 30, read personnel policies regarding procedures and sign a form that she understood them. When the meeting ended, claimant thought they had a verbal agreement to improve communication with Brown and McDonnell but was not aware her job was in jeopardy. Claimant did not receive a copy of the performance review in her mailbox until her shift beginning on March 29 was over on March 30th. Brown and McDonnell were not in the office on March 30 when she was looking for them. She did not work on the 31st and was fired on April 1. Thus there was not reasonable time to complete information.

While employer alleged claimant lied on her application and said she was a LPN, claimant did not tell Brown she was licensed as an LPN only that she was doing private nursing and respite care for Amicare. Both require nurse's aide or assistant licensing, CPR, medication aide and in home care classes. She was in the process of taking science classes at Clarke College but had no degree or certification. She had attended Clarke in 1994 but was injured and suspended her education for a period of time. She does intend to obtain a RN degree and continue on past LPN course requirements but has no set date for graduation. She agrees she may have told Brown she was taking nursing degree classes without specifying a particular degree or current status. At a meeting in March, claimant and another employee were instructed to get certificates under which they were hired and she made arrangements for NICC to transfer all transcripts and her CNA certificate to employer sometime in March. (Claimant's Exhibit B)

Jennifer Manders who was separated from employer January 2005 experienced no personal problems with claimant but did experience communication problems with supervisors.

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).

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." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as employer did not give claimant sufficient notice to complete the tasks assigned to her on March 25 and she did not receive written confirmation of the assignments until the day they were due, it has not met the burden of proof to establish that claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written with a copy to the employee), detailed, and *reasonable notice* should be given. Furthermore, there was not sufficient evidence to show that claimant ever held herself out as an LPN in her application, in the job interview or during the course of her employment. Benefits are allowed.

DECISION:

The April 26, 2005, reference 02, decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

dml/pjs