

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOHN R DALESKE
Claimant

CARE INITIATIVES
Employer

APPEAL 18A-UI-01526-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/31/17
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 25, 2018, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for failing to perform satisfactory work. The parties were properly notified of the hearing. A telephone hearing was held on February 28, 2018. The claimant, John R. Daleske, participated. The employer, Care Initiatives, participated through Melanie Rubin, Business Office Manager; Jaclyn Berhow, Director of Nursing; and Jessica Walker, Administrator; and Marcy Schneider of Equifax/Talx represented the employer. Claimant's Exhibit A and Employer's Exhibit 1 were received and admitted into the record without objection.

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: Claimant was employed full-time, most recently as a maintenance supervisor, from March 16, 2017, until December 19, 2017, when he was discharged. On December 18, 2017, charge nurse Sherice Caudle asked claimant to lay some non-skid strips down for a resident. Claimant told Caudle that this was not his job duty. Claimant had never laid non-skid strips during his employment. The head of housekeeping, who was also a CNA, usually laid the non-skid strips, as she knew the proper method and placement. Claimant believed the head of housekeeping had already left for the day. Claimant told Caudle that he knew where the non-skid strips were located, and Caudle said she would take care of it. Claimant left work. Caudle then reported to the employer that claimant refused to lay the non-skid strips. Claimant was discharged for failing to perform his job, for insubordination, and because prior to departing that day, he failed to tell anyone in management that this task needed to be completed. If Caudle had not gone to the employer to tell them about the non-skid strips issue after claimant left on December 18, that task would not have been completed and the resident could have fallen that night.

Claimant received a final warning on December 18, related to his maintenance responsibilities and resident safety. Specifically, on December 8, claimant had been asked to fix the brakes

and extension bar on a resident's wheelchair. Claimant had not completed this task by December 15, 2017. Claimant received a verbal warning on July 26, 2017, for failing to communicate with the administrator that all tasks in the maintenance log book were not completed when he left for the day. If Caudle had not gone to the employer to tell them about the non-skid strips issue after claimant left on December 18, that task would not have been completed and the resident could have fallen that night.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying misconduct. Benefits are withheld.

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(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* 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). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, claimant failed to alert the employer before he left work that there were non-skid strips that needed to be laid for a resident. Claimant had been warned in the past that he needed to communicate uncompleted tasks to the administration. As a supervisor, claimant had an obligation to ensure the safety of residents. Even if he reasonably believed that laying the non-skid strips was not a maintenance task, he knew that the person who normally completed the task was already gone and therefore he should have known it might not get completed. The employer has established that claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

DECISION:

The January 25, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn