

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**REBECCA L COLLINS**  
Claimant

**APPEAL 15A-UI-11250-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GREAT RIVER MEDICAL CENTER**  
Employer

**OC: 09/13/15  
Claimant: Appellant (1)**

---

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the September 30, 2015 (reference 01) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A telephone hearing was held on October 22, 2015. Claimant participated personally. Claimant's husband, Jody Collins, observed. Employer participated through human resources generalist Christy Ford and director of surgical services Fran Strauss. Employer's Exhibits One through Four were received.

**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 part time as a registered nurse from August 3, 1998 and was separated from employment on September 11, 2015; when she was terminated.

On Friday, September 4, 2015, claimant was assisting in a surgical procedure in which a patient was under a local anesthetic, but no sedating agent. In other words, the patient was awake and coherent while being operated on. A surgeon, an instrument technician, and one other registered nurse were present in the room with claimant and the patient. The instrument technician's lunch break was long overdue. Claimant was upset because the person responsible to relieve the instrument technician was habitually late in doing so. Claimant walked out of the operating room and loudly stated that someone needed to come relieve the instrument technician and that she was "tired of this fucking place and this fucking shit." A board runner, Margaret, followed claimant back into the operating room and asked if the instrument technician was going to lunch. Claimant began speaking loudly to Margaret. Claimant continued to speak loudly to Margaret. Several individuals asked claimant to calm down. Finally, the surgeon told claimant to stop and she did so.

After conducting an investigation, employer terminated claimant for violating its code of conduct and policy on mutual trust and respect. Claimant had previously been counseled about her attitude.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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).

Claimant lost control of her emotions and composure and openly argued with another member of the operating team in the presence of a patient who was awake and being operated on. Claimant's conduct was in deliberate disregard of the employer's interests. Employer established that it terminated claimant for misconduct.

**DECISION:**

The September 30, 2015 (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

---

Christine A. Louis  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

---

Decision Dated and Mailed

cal/can