

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARIA S REICKS

Claimant

APPEAL 17A-UI-03076-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINNESHIEK COUNTY

Employer

OC: 02/19/17

Claimant: Respondent (1)

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

Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the March 13, 2017 (reference 01) unemployment insurance decision that allowed benefits based upon claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on May 3, 2017. The claimant, Maria S. Reicks, participated personally and was represented by attorney Erin Lyons. The employer, Winneshiek County, participated through Sheriff Dan Marx, Chief Deputy Greg Torgrim, and Jail Administrator Jeanne Sebastian. Attorney John Anderson represented the employer. Claimant's Exhibits 1 – 4 were admitted. Employer's Exhibits A – I were admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records including the fact-finding documents.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

Did claimant voluntarily quit the employment with good cause attributable to employer?

Has the claimant been overpaid any unemployment insurance benefits?

Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a jailer. Her job duties included monitoring prisoners, maintaining documentation regarding prisoners, conducting prisoner searches, processing and booking convicted individuals into jail, preparing supervisor reports of inmate disturbances, serving meals, and dispensing medication. See Exhibit 1. Claimant's employment began on June 19, 2007 and ended on February 24, 2017. Jeanne Sebastian was claimant's immediate supervisor.

On January 1, 2017, claimant was working in the control room. The control room is an area that has video monitoring and surveillance of the jail. There are also mechanisms in the control

room that operate the doors of the jail, lights, water, and fire alarms. The normal work duties in the control room require physical movement. There are typically two jailers during a shift. One that is on the floor and one that runs the control room. During claimant's shift on January 1, 2017, she left the control room for a period of less than one minute. She propped the door open with a small pen. Claimant left the control room to deliver a form with driver's license information on it regarding an inmate to the intake area. This intake area was 15 feet from the control room.

Claimant was on vacation beginning January 2, 2017 until January 9, 2017. During her vacation, she sustained injuries to her leg. Claimant was absent from work beginning January 9, 2017 until January 17, 2017, due to her leg injuries. On January 17, 2017, claimant emailed her supervisor a doctor's note from her treating physician, Dr. Johnson, which stated that she was excused from work until February 14, 2017 due to her leg injury. See Exhibit G. Upon receipt of that doctor's note, Sheriff Marx telephoned claimant's doctor to inquire what conversations the two had about her injuries and her ability to return to work. Sheriff Marx described the control room job as being sedentary work.

On January 19, 2017, claimant's doctor wrote three new authorizations to return to work with restrictions. See Exhibit 3. The first note stated "sedentary only until February 14, 2017. "Control Jailer" job OK." See Exhibit 3. The second note included additional language stating, "patient is not able to drive with brace on, and is not able to take brace off to drive." See Exhibit 3. The third note added the language "ok to take brace off for driving only." See Exhibit 3. Sheriff Marx testified that during his telephone conversation with Dr. Johnson, he was told that claimant did not inform Dr. Johnson about the ability for her to work in the control room area. Claimant testified that she did tell Dr. Johnson what her general job duties were and he stated to her that he knew what a jailer did.

Sheriff Marx contacted the claimant and told her that he had spoken to her doctor and that she could return to work in the control room. Claimant returned to work as instructed by Sheriff Marx on January 24, 2017. Claimant reported that she was in extreme pain at work on this date due to her leg injury. Her doctor took her off work until January 31, 2017. She returned to work after January 31, 2017.

On or about January 26, 2017, Ms. Sebastian sent claimant an email with a general medical release for her to sign. Claimant refused to sign the medical release because it requested that she allow her employer to review all of her medical records for her entire medical history.

On February 2, 2017, claimant met with Sheriff Marx, Ms. Sebastian and others to discuss why she was refusing to sign the general medical release. A few minutes prior to the February 2, 2017 meeting, a city police officer, who had witnessed claimant leaving the control room on January 1, 2017, reported this to Sheriff Marx.

During the February 2, 2017 meeting, the two parties agreed to limit the general medical release to all medical records relating to the treatment of her injured leg from January 1, 2017 to present. See Exhibit 4. Claimant also authorized her doctors to discuss her leg injury with her employer. See Exhibit 4. During this meeting, Sheriff Marx asked claimant whether she left the control room on January 1, 2017. Claimant admitted that she did. Claimant informed Sheriff Marx that other employees have left the control room while assigned to that area as well. Sheriff Marx interviewed other jailers after this meeting and one jailer admitted that he had left the control room. This jailer eventually received a written warning for his actions in leaving the control room.

On February 10, 2017, claimant again met with Sheriff Marx and he discharged claimant from employment, effective February 24, 2017 with a paid administrative leave beginning February 10, 2017 and ending February 24, 2017. See Exhibit A. The reasons given for claimant's discharge included failing to reasonably inform her doctor about her job description and light duty options; impeding management from discussing her health with her doctor; failing to reasonably seek accommodation from management; and leaving the control room unattended while she was 15 feet down the hallway. See Exhibit A. The employer also referenced other previous discipline from October of 2008 through June of 2016. See Exhibit A. Prior to the final incident, claimant had received previous discipline and had most recently been disciplined on June 22, 2016 regarding the removal of a note from the jail. See Exhibit B.

Jailers are to become familiar with the jail policies and the Iowa Administrative code that governs jail personnel. Iowa Administrative Code 201-50.13(2) provides that the jail administrator shall develop and implement written policies and procedures for the jail which provide for the control of prisoners and for the safety of the public and jail staff. The policy and procedures shall include:

a. Supervision of prisoners

- (1) Twenty-four hour supervision of all prisoners shall be provided pursuant to Iowa Code section 356.5(6)
- (2) When staff is not within the confinement area of the jail, a staff person shall be in a position to hear prisoners in a life-threatening or emergency situation, or a calling device to summon help will be provided. By policy and practice there shall be a means of ensuring that appropriate personnel with be available on a 24-hour basis to respond to an emergency including, but not limited to, fire, assaults, suicide attempts, serious illness, and to preserve order, within a reasonable time period.

There is no written policy that states jailers who work in the control room are required to be present in the control room at all times. Iowa Administrative Code 201-50.13(2) provides that the jail administrator shall develop and implement written policies and procedures for the jail but no such policy stating that claimant would be subject to discharge if she left the control room was presented at the hearing.

Claimant received benefits in the amount of \$1,645.00 for the six weeks between February 19, 2017 and April 1, 2017. Employer did participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed.

As a preliminary matter, I find that the Claimant did not quit. Claimant was discharged from employment.

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).

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.

Further, 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). 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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job

insurance benefits. Such misconduct must be “substantial.” *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* 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). Further, 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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

In this case, claimant’s actions do not amount to misconduct. The first reason given for claimant’s discharge included her failure to sign a general medical release that would have allowed her employer access to all of her medical records from her birth to present. The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer’s request in light of all circumstances and the employee’s reason for noncompliance. *Endicott v. Iowa Dep’t of Job Serv.*, 367 N.W.2d 300 (Iowa Ct. App. 1985); *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa Ct.App.1982)(an employee’s failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause). The employer’s request for claimant to sign a general medical release that would have allowed her employer access to all of her medical records from her birth to present was not reasonable. Because the request was unreasonable, claimant’s refusal to sign the release was not insubordination.

The second reason given for claimant’s discharge included her alleged failure to discuss with her doctor her job duties in the control room. Claimant’s job duties in the control room were not limited to sedentary duties. Claimant did discuss with her doctor her job duties and was told that he understood what a jailer did. There was no credible evidence presented that claimant was dishonest to Dr. Johnson or that she attempted in any way to lead Dr. Johnson astray in communicating her job duties at work. Employer did not establish that claimant’s actions or inactions indicated any wrongful intent or constituted a material breach of her duties and obligations to the employer.

The last reason given for claimant’s discharge included her leaving the control room for less than a minute to travel 15 feet in order to give a form to staff for processing an inmate. Claimant had witnessed another employee leave the control room before. Claimant had left the control room before and was never disciplined for these actions. There was no policy in place that made claimant aware that she would be discharged from employment for leaving the control room. There was nothing in her job description or Iowa Administrative Code that should have reasonably informed her that these actions would lead to her discharge. In fact, the other employee who also left the control room was not discharged, but was given a written discipline. The claimant could not have reasonably anticipated she would be discharged for the same action.

Based on evidence presented, the administrative law judge concludes that claimant’s action in leaving the control room to attend to other job duties were an isolated incident of poor judgment and claimant is guilty of no more than “good faith errors in judgment.” 871 IAC 24.32(1)(a). Instances of poor judgment are not misconduct. *Richers v. Iowa Dept. of Job Services*, 479 N.W.2d 308 (Iowa 1991); *Kelly v. IDJS*, 386 N.W.2d 552, 555 (Iowa App. 1986). Her actions were not an intentional and substantial disregard of the employer’s interest that rises to the level of willful misconduct.

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. 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. As such, benefits are allowed. Because benefits are allowed, the issues of overpayment and chargeability are moot.

DECISION:

The March 13, 2017 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/scn