

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MEGAN E FOY
Claimant

APPEAL 19A-UI-01021-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CATHOLIC HEALTH INITIATIVES
Employer

**OC: 01/13/19
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 4, 2019, (reference 01) unemployment insurance decision that denied benefits based upon her discharge for violation of a known company rule. The parties were properly notified about the hearing. A telephone hearing was held on February 20, 2019. Claimant participated and testified. Employer did not participate.

ISSUE:

Was the claimant discharged for disqualifying misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on May 11, 2015. Claimant last worked as a full-time patient care technician. Claimant was separated from employment on January 17, 2019, when she was discharged.

The employer uses a third-party vendor, the Reed Group, to process FMLA requests made by its employees. In December 2018 claimant notified the employer she required light duty due as a pregnancy-related accommodation. On December 20, 2018 claimant was notified that she was being given a one-day suspension for violating the employer's FMLA protocol by failing to notify the Reed Group of her light-duty restrictions. Claimant was not aware that she was supposed to give this information to the Reed Group, as it did not involve a request for time off work. Claimant was advised that when she returned from her suspension she would have until January 8, 2019 to develop an action plan, consisting of three goals and specific steps to meet those goals, to ensure that this did not happen again. Claimant was warned if she failed to complete the action plan she would be discharged from employment.

After the meeting claimant followed up with the Reed Group regarding her light duty accommodation request. Claimant was advised that the Reed Group was not involved in decisions regarding workplace accommodations and it was not necessary to provide them with this information. Claimant asked if they could provide written documentation of what she had just been told. Claimant then filed a grievance of her suspension. The Reed Group sent claimant a letter confirming it did not need to know about her light duty, which she received

January 3, 2019. Claimant tried to show the letter to her employer, but it refused to accept the document. On January 17, 2019, claimant was called into a meeting with two members of management. Claimant was informed that she was being discharged because she had not completed her action plan by January 7. Claimant testified she did not believe she had to complete the action plan while her grievance was still pending and was not aware she was in danger of being discharged.

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 § 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 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.” When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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).

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 assess points or impose discipline up to or including discharge for the incident under its policy. 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, employer incurs potential liability for unemployment insurance benefits related to that separation.

Insubordination does not equal misconduct if it is reasonable under the circumstances. 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 App. 1985). An employee’s failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. (Refusal to pick up mail at a place where racial harassment occurred.) *Woods v. Iowa Dep’t of Job Serv.*, 327 N.W.2d 768, 771 (Iowa 1982).

In this case, claimant failed to complete an action plan while the disciplinary action leading to the directive to complete the plan was being grieved. The employer’s request that claimant even complete such a plan after she offered them written confirmation that the Reed Group did not require her to report her need for an accommodation was unreasonable in and of itself. Claimant’s belief that she could wait until a decision was made on her grievance was in good faith and reasonable given the circumstances. Inasmuch as claimant had a reasonable, good faith reason for refusing to do the assigned work, the employer has not met the burden of proof to establish that claimant engaged in misconduct. Benefits are allowed.

DECISION:

The February 4, 2019, (reference 01) 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 shall be paid to claimant.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs