

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AUBREYA ALLEN
Claimant

MERCY CLINICS INC
Employer

APPEAL 21A-UI-13639-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/28/21
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 4, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the conclusion she was discharged for violating a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on August 11, 2021. The claimant participated. The employer participated through Appellate Hearing Representative Jacqueline Jones, Human Resources Representative April Harrington and Clinic Manager Adriana Maples. Official notice was taken of the administrative records. Exhibits 1, 2, A, and B were received into the record.

ISSUE:

Whether the claimant's separation was disqualifying?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant was employed full-time as a receptionist from October 10, 2016, until this employment ended on April 2, 2021, when she was discharged. The claimant's immediate supervisor was Clinic Manager Adriana Maples.

The employer has a personal cell phone usage policy which states that employee should never post photos or videos on any personal social networking site "displaying the premises or any employees." The employer also has a social media policy which prohibits an employee from engaging in behavior that contradicts the employer's interest. The employer also has a code of conduct stating that employees should behave in a professional matter at all times. Employees are required to acknowledge receipt of the code of conduct every year.

On March 23, 2020, the claimant posted a message on Facebook stating that she was sick of being asked about Covid19 issues. Ms. Maples thought that it put the employer in a negative

light and asked the claimant to remove it from Facebook. Ms. Mapes reminded the claimant of the employer's code of conduct.

On September 14, 2020, the claimant was issued a warning suspending her for one day for unrelated misconduct occurring on September 10, 2020 and for being on her cell phone while she was in the office on August 17, 2020. The suspension warned, "Any future incidents that require discipline will result in the next appropriate step of the discipline process (i.e. termination of employment.)" The employer provided a copy of this written warning. (Exhibit 1)

On October 28, 2020, the claimant was seen making a video call from the front desk. She was told that she needed to put her cell phone away or to take the call in a non-patient area.

On March 30, 2021, a coworker took pictures of the claimant lying on a counter. The claimant provided pictures taken of her and posted on Instagram. One of the pictures shows the claimant looking away from the camera. The other picture shows the claimant looking at the camera. (Exhibits A and B) Staff can post information protected by the Health Information and Portability Accountability Act (HIPPA) on the counter and on the corkboard behind the desk. This area is visible in the picture showing the claimant looking away from the camera, but none of this information appears to be visible. The area around where the claimant took the picture is an area patients walk through. There were no patients walking through the area at the time.

On April 1, 2021, Ms. Mapes became aware of the pictures the claimant had posted to Instagram on March 30, 2021. Ms. Mapes showed the pictures to the claimant. The claimant explained she had been depressed since November 2020 due to the death of her father and taking the pictures that day made her feel better. Ms. Mapes made the decision to terminate the claimant because she had previously been warned on September 14, 2020 that any additional incidents of this type would not be tolerated.

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 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.

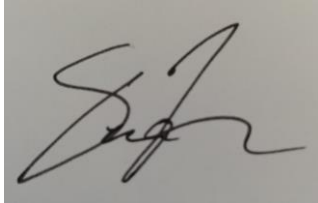
This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa 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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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). 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 employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented substantial and credible evidence that claimant had been warned for similar behavior in the past. Despite these warnings, claimant continued to engage in similar behavior. This is disqualifying misconduct.

DECISION:

The June 4, 20121, (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.



Sean M. Nelson
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August 19, 2021
Decision Dated and Mailed

smn/mh