

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LIONDA A GRZESLO
Claimant

ABCM CORPORATION
Employer

APPEAL 16A-UI-06351-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/01/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Lionda A. Grzeslo (claimant) filed an appeal from the May 27, 2016, (reference 01) unemployment insurance decision that denied benefits based upon the determination ABCM Corporation (employer) discharged her for unsatisfactory work which she was able to perform. The parties were properly notified about the hearing. A telephone hearing began on June 22, 2016 and was concluded on June 29, 2016. The claimant participated personally and was represented by Attorney Ernie Wilke. The employer participated through Director of Nursing Dawn Runksmeier. Employer's Exhibits 1 through 4 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: The claimant was employed full-time as a Licensed Practical Nurse (LPN)/Charge Nurse beginning on January 5, 2011, and was separated from employment on May 5, 2016, when she was discharged. The claimant was responsible for assisting in body audits of incoming residents, administering medication, and supervising the floor during her shift.

The claimant received multiple disciplinary warnings during her tenure. She received four warnings in 2013 for infractions such as not recording cares for residents, not appropriately administering medications, and leaving her medication cart unlocked and unattended. In 2014, she received five warnings for similar infractions. In 2015, the claimant received four more warnings for similar infractions. On March 16, 2016, the claimant was given a warning when she improperly recorded a new medication in the wrong resident's chart and informed the incorrect family about the medication change. Runksmeier notified the claimant that all of the claimant's orders for the next three months needed to be reviewed and that another violation of professional standards would result in her discharge.

On May 5, 2016, Runksmeier discharged the claimant for multiple infractions that occurred on April 30, May 1, and May 3, 2016, the last day that the claimant worked. On April 30 and May 1, 2016, the claimant recorded in a resident's chart that she had administered the resident's blood pressure medication. However, it was discovered on May 3, 2016 that the pharmacy had neglected to fill the resident's blood pressure medication for those days so there was no medication for the claimant to give the patient. The claimant knew at the time she affirmed she had administered the medication in the resident's chart that she had not given the resident the medication, but did not want to get in trouble for not administering the medication. She did not report to anyone that the medication was not available to administer to the resident. On May 3, 2016, the claimant improperly measured a wound on an incoming patient, did not complete a body audit on a new admission, and did not complete a mental assessment on another resident.

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. Benefits are denied.

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). 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). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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).

The employer has presented substantial and credible evidence that the claimant continued to perform her work incorrectly after having been warned. Workers in the medical or dependent care profession, reasonably have a higher standard of care required in the performance of their job duties. That duty is evident by special licensing requirements. Regardless of whether the claimant should have been conducting body audits on incoming residents under her licensing requirements, she was appropriately charged with administering medications. The claimant knowingly recorded in a medical chart that she had administered a resident his or her blood pressure medication when she had not. The claimant had also been put on notice that continued failure to perform her job under the nursing professional standard would result in her discharge. The employer has an interest in and a duty to provide a safe environment for its residents. The claimant's conduct was a deliberate disregard of the employer's interest. The employer has met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Accordingly, benefits are denied.

DECISION:

The May 27, 2016, (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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/pjs