

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**ABIGAIL M HOPPE**  
Claimant

**APPEAL NO: 18A-UI-05272-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CRESTVIEW ACRES INC**  
Employer

**OC: 04/01/18**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant, Abigail M. Hoppe, filed an appeal from the April 24, 2018, (reference 03) unemployment insurance decision that denied benefits based upon separation. A telephone hearing was held on May 31, 2018. The claimant participated personally and through Erin Patrick Lyons, attorney at law. The employer, Crestview Acres Inc., participated through Kim Mason, operations nurse specialist. Claimant Exhibits A-I and Employer Exhibits 1 and 2 were admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**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 an MDS coordinator from 2013 until July 2017 (Claimant Exhibit B, C). The claimant then worked full-time hours in a PRN (on-call) status beginning January 2018 (Claimant Exhibit F) and was separated from employment on April 3, 2018, when she was discharged (Employer Exhibit 1).

The employer operates as the Sunnycrest Nursing Center, which has approximately 32-37 residents. Some of the residents are in skilled care, others are not. The claimant is a licensed nurse, and performed multiple job functions while employed. Sometimes she would fill in during nursing shortages, and sometimes she helped with scheduling, MDS reports or training new staff. At the end of the claimant's separation, Ms. Mason described her job title as "helping with MDS reports/assistant director of nursing (DON) and assisting in training the new DON".

The employer was required to complete an MDS (minimum data set) report for each resident on a quarterly and annual basis, and for skilled residents, more often. The report was then submitted for reimbursement from Medicaid/Medicare. The report was time sensitive and failure

to complete reports on time could result in the employer facility losing \$150.00 per day, per incomplete report. To complete a report, the claimant would review information from charts, interviewing staff and interviewing the resident. She would then input her information into sections of the template. Other employees such as the activities director, social worker and dietician were also responsible for sections on the report. Failure to complete any question would lead to an incomplete report. The claimant, in her prior role as MDS coordinator, knew the process and importance of the reports.

Due to staff turnover, the employer did not have an MDS coordinator in early 2018. Ms. Mason joined the employer staff as administrator in January 2018 and helped complete reports until her departure in that role on March 15, 2018. The claimant then performed duties in that capacity, even though she was still PRN (on-call) until her separation. The claimant was not given designated shifts or time allotted to complete the reports and expected to complete them in between other job duties. On March 29, 2018, the claimant around 3:30 p.m. was confronted by her supervisor, Amanda, and given a warning for failure to be caught up on MDS reports (Employer Exhibit 2). The claimant handwrote that she intended to be caught up by Sunday (Employer Exhibit 2). On Monday, when Ms. Mason reviewed the reports, she saw at least three overdue reports remained and others were incomplete. She had no other details about the incomplete/overdue reports.

The claimant indicated she had stayed late to complete reports on March 29, 2018, going home and returning back to the facility. She was interrupted for several hours due to an unplanned, emergency admission in the evening (Claimant Exhibit G). When she attempted overnight to input information, the computer system was down (Claimant Exhibit G). She left a note for her manager to alert her. The claimant then returned to work on Sunday, April 1, 2018, to continue working on reports but experienced additional technical difficulties (Claimant Exhibit H, I). She left both a handwritten note and email to her manager, alerting her to the status of the MDS reports. As a result of the claimant not being completely caught up, she was subsequently discharged.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory

conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

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.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the claimant and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

Because the claimant was discharged, the employer has the burden of proof in this matter. Misconduct "must be "substantial" to justify the denial of unemployment benefits. *Lee, v. Employment Appeal Bd.* 616 N.W.2d at 665. "Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits. The focus is on deliberate, intentional, or culpable acts by the employee. *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992). The employer discharged the claimant for unsatisfactory job performance for failure to complete resident MDS reports. Cognizant of the importance of the reports and the loss of revenue for the employer if reports are untimely, the credible evidence presented does not support the claimant willfully neglected the reports. Rather, the claimant was an on-call employee who had assumed additional responsibilities to help the employer during staffing transitions and at the time of separation, was performing multiple roles including MDS coordinator, assistant director of nursing and training. Further, once the employer identified reports were behind, no additional support was offered to the claimant to help her. Instead, the claimant voluntarily stayed late to get caught up but had to help with an emergency admission instead, and had to juggle her other pressing duties while trying to get caught up. The employer established business reasons for discharging the claimant, but the facts do not establish that the claimant intentionally failed to perform her job satisfactorily. The claimant worked to the best of ability after her job responsibilities increased.

The question before the administrative law judge in this case is not whether the employer has the right to discharge this employee, but whether the claimant's discharge is disqualifying under

the provisions of the Iowa Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above stated reasons, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing that the claimant's discharge was due to job related misconduct. Accordingly, benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The April 24, 2018, (reference 03) decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The benefits claimed and withheld shall be paid, provided she is otherwise eligible.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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