

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

WENDI M MARTIN

Claimant

BLACK HAWK COUNTY

Employer

APPEAL NO. 14A-UI-06270-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/18/14

Claimant: Appellant (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 10, 2014, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on July 9, 2014. Claimant participated personally. Employer participated by Audra Heineman. Claimant's Exhibit A and Employer's Exhibits 1-6 were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on May 1, 2014. Employer discharged claimant on May 8, 2014 because claimant did not properly document the medication administration logs for students in need of medication.

Claimant stated that her actions in regards to both writing down absences for students who were actually present in school but did not receive medications, and for the procedures used to check to see if those students could be located such that they could take their medications were told to her by her superiors. Unquestionably claimant's actions were not in accordance with mandated procedures that she had received. Claimant had received prior disciplinary warnings concerning her documentation of medications given to students, and had previously received a performance improvement plan. When confronted about her actions in writing down that a student needing medicine was absent 19 times when in fact he was at school, claimant stated that she was told to fill out forms in that manner. Claimant then said that she put absent believing someone else would give the medicines. The instructions given for filling out forms do not allow for either of these actions.

REASONING AND CONCLUSIONS OF LAW:

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(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.

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the 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.

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). In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning documentation of medicines given. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant was found to have repeatedly failed to give medication to students who were present in school and causing difficulties. Claimant often marked the students down as absent when medications were not given, even though the students were in school. Claimant's statement that others were to be responsible for the act of giving the medications does not make sense. She had time, under mandated guidelines that she knew, to give the medications to the main child in question before she was to leave for the day. Medications weren't given, the school was put at risk, and the medication sheets indicated that the child was not present. The administrative law judge holds that knew the proper procedures to follow, and chose not to follow those procedures, thereby endangering students. Claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated June 10, 2014, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

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