

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KATHLEEN SIEBERT
Claimant

APPEAL 16A-UI-08691-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 07/10/16
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 27, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on August 26, 2016. The claimant, Kathleen Siebert, participated. The employer, The University of Iowa, sent in a written notice stating it would not be participating in the hearing.

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: Claimant was employed part time, most recently as a nursing unit clerk, from sometime in the 1990s until July 10, 2016, when she was discharged for calling in late to work on June 26, 2016. Claimant was supposed to call in by 5:30 a.m. She ended up calling in around 6:20 a.m. She had been out of the area at her mother's home, and there was a power outage where her mother lived and so claimant was not woken up at the correct time. Had her alarm gone off, she would have had clean clothes and she would have been able to report to work. However, as she woke up late and without power, she was unable to go to work. Claimant had no knowledge that her job was in jeopardy at the time. Claimant had one previous instance in which she was not able to call in on time. She had a medical condition that prevented her from calling in before her shift. This was approximately two years before her employment ended.

REASONING AND CONCLUSIONS OF LAW:

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

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).

In an at-will employment environment 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, it incurs potential liability for unemployment insurance benefits related to that separation. 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.

The conduct for which claimant was discharged was merely an isolated incident. Claimant testified that the power had gone out, and therefore her alarm did not go off. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. While claimant may have failed to call in at the proper time two years ago, that was under different circumstances and cannot be considered to

have adequately warned her about what happened in June 2016. As the employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

DECISION:

The July 27, 2016, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

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