

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHRISTINA MAHAMA
Claimant

ABCM CORPORATION
Employer

APPEAL 21A-UI-02487-ED-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/13/20
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the December 23, 2020, (reference 02) unemployment insurance decision that denied benefits based upon her discharge from employment for misconduct. The parties were properly notified of the hearing. A telephone hearing was held on March 5, 2021. The claimant, Christina Mahama, participated personally. The employer, ABCM Corporation, participated through Gianni Monshat.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:
On September 21, 2005, claimant was hired as a nurse. Claimant worked full time and her immediate supervisors were Gianni Monshat and Stephanie Mosher until she was discharged on September 10, 2020. The last day claimant physically worked was September 7, 2020.

Claimant was discharged for a medication error on September 1, 2, and 4, 2020; incorrect documentation of an incident; and notification of a physician that was not done in a timely manner. Claimant called Stephanie Mosher on September 4 to notify her of a medication error. The Director of Nursing looked into the matter and determined an incorrect dose was also given by claimant on the 1st and the 2nd. The errors were all made regarding the same resident.

The claimant did not work on September 3, 2020 and the resident received the correct dose on that date. The incident report was completed by claimant on September 6, which was two days after the incident occurred. The expectation is that the incident report is to be completed on the same day of the incident. Even though the incident occurred on September 4, the doctor wasn't notified until September 6. The expectation is that the doctor should have been notified on the same day as the medication error.

Claimant received three previous written disciplinary actions. On August 2, 2020 claimant was written up for incorrect charting. On August 13, 2020 and August 18, 2020 claimant was written up for time management as she was taking much longer than necessary to complete her work and she wasn't asking for help when it became clear she was falling behind.

REASONING AND CONCLUSIONS OF LAW:

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

As a preliminary matter, I find that the Claimant did not quit. Claimant was discharged from employment.

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).

871 IAC 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.

871 IAC 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.

Further, 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).

There was no evidence presented that any of the incidents were intentional or were caused by claimant's carelessness which indicated a wrongful intent.

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *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). Further, 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).

This type of behavior does not rise to the level of misconduct. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). There is no evidence that the claimant's actions had any wrongful intent.

Reoccurring acts of negligence by an employee would probably be described by most employers as in disregard of their interests. *Greenwell v Emp't Appeal Bd.*, No. 15-0154 (Iowa Ct. App. March 23, 2016). The misconduct legal standard requires more than reoccurring acts of negligence in disregard of the employer's interests. *Id.*

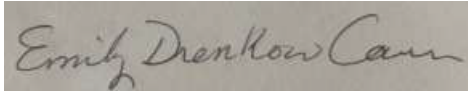
Further, a claimant's poor work performance does not disqualify her from receiving benefits. Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon*, 275 N.W.2d at 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552 (Iowa Ct. App. 1986).

While claimant made a medication error on September 1, 2, and 4, there is no indication that claimant intentionally did so. Further, Claimant's documentation error and delay in notifying the physician, while certainly are serious enough to warrant discharge on behalf of the employer, there is no indication of intent. Instead, claimant's actions are mistakes.

The employer failed to meet its burden of proof in establishing disqualifying job misconduct. As such, benefits are allowed.

DECISION:

The December 23, 2020, (reference 02) unemployment insurance decision is reversed. 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.



Emily Drenkow Carr
Administrative Law Judge

March 11, 2021
Decision Dated and Mailed

ed/lj

NOTE TO CLAIMANT: You may find additional information about food, housing, and other resources by dialing 211 or at <https://dhs.iowa.gov/node/3250>