

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**BRENDA S BERGMANN**  
Claimant

**ALLEN MEMORIAL HOSPITAL**  
Employer

**APPEAL 14A-UI-11759-LT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/12/14**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from the November 3, 2014 (reference 01) unemployment insurance decision that allowed benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on December 4, 2014. Claimant participated. Employer participated through clinic manager Barb Krueger; CEO Mary Wells; CFO Dawn Everding; and was represented by Emily Reiners, Attorney at Law. Human Resource Manager Robin Elliott did not participate. Employer's Exhibits One through Three 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: Claimant was employed full time as a patient access clerk from February 2, 2009 and was separated from employment on October 8, 2014. Krueger heard her speaking/whispering to a flu shot patient, who is a friend of hers, about Wells' retirement and her possible replacement. They spoke briefly about that person's youth and education. Claimant added she loved her job but still thought some other changes needed to be made in human resources. The patient went for the shot and a bit later Krueger called claimant into her office with Sheila Uhlenhake, clinic supervisor. They confronted her and claimant acknowledged she spoke to her friend about the topic.

The employer had not previously warned claimant her job was in jeopardy for any similar reasons, such as negativity. There had been a verbal discussion in May 2014 after a nurse practitioner, above claimant in the hierarchy, asked claimant questions about why another employee did not like her. Claimant told her what she had heard the employee say about her. The employer agreed the nurse practitioner put her in a bad position.

## REASONING AND CONCLUSIONS OF LAW:

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

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(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.

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 of poor judgment and inasmuch as 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.

**DECISION:**

The November 3, 2014 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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