

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MICHAEL GEORGE**  
Claimant

**LUTHERAN HOMES SOCIETY**  
Employer

**APPEAL 21A-UI-11965-CS-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/07/21**  
**Claimant: Appellant (2)**

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Iowa Code §96.5(2)a-Discharge/Misconduct  
Iowa Code §96.5(1)- Voluntary Quit

**STATEMENT OF THE CASE:**

On April 28, 2021, the claimant/appellant filed an appeal from the April 26, 2021, (reference 01) unemployment insurance decision that denied benefits based on claimant being discharged for insubordination. The parties were properly notified about the hearing. A telephone hearing was held on July 16, 2021. Claimant personally participated at the hearing. Employer registered a phone number for Kelsey Bon and the administrative judge attempted to call the number twice. The administrative law judge left a message for Ms. Bon to call into the hearing but the administrative law judge did not receive a call from the employer prior to the conclusion of the hearing. Claimant also registered witnessed Justin Duo, Edorcia Nyemu, Launeh Smith but they were not called to testify.

**ISSUE:**

Was the separation a discharge for job related misconduct that disqualified claimant from unemployment benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in June 2015. Claimant last worked as a full-time certified nursing aide and a certified medication aide. Claimant was separated from employment on March 10, 2021, when he was discharged by the employer.

On March 10, 2021, claimant arrived at work and observed he was scheduled to work a unit he does not typically work. Claimant called his supervisor Amber and requested that he work a different unit. Amber told claimant that if he refused to work the unit he would be fired. Claimant told Amber he was not refusing to work the unit he was just requesting that he work a different unit. Amber responded to claimant's request by telling him he was fired for refusing to work the assigned unit. Claimant did not refuse to work the assigned unit. Claimant did not have any prior verbal or written warnings for refusing to work assigned units.

Employer did not participate at the hearing. No evidence of violation of company policies or rules was presented during the hearing.

**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 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).

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). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

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 impose discipline up to or including discharge for the incident under its policy.

There was no evidence establishing the reason the claimant was terminated. Claimant was unaware of any violations of the employer's policies or rules. Claimant testified he had not receive any prior verbal warnings or written warnings. 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. Training or general notice to staff about a policy is not considered a disciplinary warning. 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. Benefits are granted.

**DECISION:**

The April 26, 2021, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



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Carly Smith  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

July 26, 2021  
Decision Dated and Mailed

cs/lj