

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VICKIE L JOHNS
Claimant

GENESIS HEALTH SYSTEM
Employer

APPEAL 21A-UI-05542-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/13/20
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

On February 19, 2021, Genesis Health System (employer/appellant) filed an appeal from the February 16, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding claimant was dismissed from work on December 14, 2020 without a showing of misconduct.

A telephone hearing was held on April 26, 2021. The parties were properly notified of the hearing. Employer participated by Supervisor Angela Rieck. HR Coordinator Leann Ferguson participated as a witness for employer. Vickie Johns (claimant/respondent) participated personally.

Employer's Exhibits 1-4 were admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a full-time registered nurse. Claimant's first day of employment was September 22, 1997. Claimant's immediate supervisor was Rieck. The last day claimant worked on the job was December 14, 2020. Claimant was discharged by Rieck and Ferguson on that date. The reason given for her discharge at that time was timecard falsification.

For several months prior to her discharge, claimant would arrive to work; pull her car to the entrance; go inside to get a cart and clock in; take the cart to her car; move her items for the day from her car into the cart; park her car; and then wheel in the cart to her work station and begin to work. Claimant needed to use the cart to transport her items inside because she must use a cane when walking from the parking lot into the building and therefore does not have free use of her hands for carrying items.

On the several occasions of this nature that employer documented, claimant clocked in approximately five minutes before her shift start time and then arrived at her work station a minute or two after her scheduled start time. Importantly, claimant was not paid for the several minutes she clocked in prior to her shift start time, as employer rounds up clock-ins that occur up to seven minutes prior to the shift start time to the shift start time. Employer did not discharge claimant due to tardiness.

Claimant was not warned that her conduct was in violation of employer's standards and given an opportunity to correct it prior to discharge. She did not believe her conduct was in violation of employer's rules. This was due in part to her observing other employees regularly clocking and then getting a cup of coffee, going to the bathroom, or returning to their car to retrieve something before beginning their work for the day. Other employees were not disciplined for these actions. Claimant acknowledged her conduct and did not attempt to conceal it at the time of discharge.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the February 16, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding claimant was dismissed from work on December 14, 2020 without a showing of misconduct is AFFIRMED.

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 provides in relevant part:

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).

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). 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).

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). The focus is on deliberate, intentional, or culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman, Id.* In contrast, 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. *Newman, Id.*

When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). However, conduct asserted to be disqualifying misconduct must be both specific and current. *West v. Emp't Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

The administrative law judge finds employer has not carried its burden of proving claimant is disqualified from receiving benefits because of a current act of substantial misconduct within the meaning of Iowa Code section 96.5(2).

The administrative law judge finds claimant was not on notice that her conduct was in violation of employer's standards. This is due in part to her observing other employees engaging in essentially the same conduct without repercussion and also due in part to employer not warning claimant regarding the conduct prior to discharging her. It was therefore not an intentional disregard of the employer's interests or of her duties and obligations to the employer. Furthermore, any harm to employer caused by claimant's conduct is not substantial. Claimant was not paid for the few minutes she clocked in early and her lateness was minimal. Importantly, while claimant was tardy on the few occasions employer documented, she was not discharged due to tardiness. Finally, the conduct which led to claimant's discharge is largely

indistinguishable from the conduct of other employees who were not discharged. It is difficult to find that claimant's conduct rises to the level of substantial misconduct when others were allowed to engage in essentially the same conduct without repercussion.

For these reasons benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The February 16, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding claimant was dismissed from work on December 14, 2020 without a showing of misconduct is AFFIRMED.



Andrew B. Duffelmeyer
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April 30, 2021
Decision Dated and Mailed

abd/ol