

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MELONY LOY
Claimant

VA CENTRAL IA HEALTHCARE
Employer

APPEAL 19A-UI-08393-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/29/19
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the October 21, 2019 (reference 01) unemployment insurance decision that found the claimant was not eligible for unemployment insurance benefits based upon her discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on November 18, 2019. The claimant, Melony Loy, participated personally. The employer, VA Central IA Healthcare, participated through witness Jonah Krause. Claimant's Exhibits A through J were admitted.

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 from August 21, 2017 until her employment ended on September 18, 2019. Claimant worked full-time as a nurse practitioner in the palliative care clinic. She began working as a nurse practitioner on December 24, 2017. Claimant's job duties included caring for patients. Dr. Ethel Condon was claimant's immediate supervisor.

A review of claimant's patient care was conducted beginning in February of 2019. A reviewer determined that the claimant failed to meet the standard of care in the case of 13 patients. The complaints stemmed from allegations that the claimant was failing to follow the pain policy. The employer did not have a pain policy in place; however, the CDC's guidelines for prescribing opioids for chronic pain was a policy that was followed for patients who were not in palliative care treatment. See Exhibit G. The patients that the reviewer believed claimant was not properly following the pain policy for palliative care patients and the pain policy would not be followed for these type of patients. See Exhibits G, H and I.

Claimant responded in writing to the reviewers' determination that she failed to meet the standard of care for these patients. See Exhibit E. The matter went to the Summary Review Board ("SRB") and it was determined that the claimant should be discharged due to the reviewer's findings. However, claimant was given the opportunity to submit a written resignation

to the SRB instead of being discharged, which she tendered after learning she would be discharged on September 18, 2019. There was not continuing work available to the claimant because she would have been discharged effective September 18, 2019 had she not resigned.

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, provided the claimant is otherwise eligible.

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.

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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

Report required. The claimant's statement and 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.

Iowa Admin. Code r. 871-24.32(8) provides:

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Iowa Code § 96.6(2); *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). The misconduct must be "substantial." *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000) (citation omitted). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. *Id.* (citation omitted). Mere negligence is not sufficient. *Id.* at 666.

When the conduct is based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated 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." *Greenwell v. Emp't Appeal Bd.*, 879 N.W.2d 222, 228 (Iowa Ct.App. 2016)(citing Iowa Admin. Code r. 871-24.32(1)a).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant's testimony, along with Exhibits G, H and I, are credible to establish that the CDC's guideline for prescribing opioids for chronic pain does not apply to patients receiving palliative care.

As such, the claimant did not fail to meet the standard of patient care when she did not follow the guidelines for patients receiving palliative care since those guidelines did not apply to these patients. The employer has failed to meet its burden of proof in establishing a final incident of disqualifying job-related misconduct. As such, benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The October 21, 2019 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/scn