

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LISA A THOMPSON
Claimant

CENTRAL IOWA HEALTHCARE
Employer

APPEAL NO. 16A-UI-06388-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/15/16
Claimant: Appellant (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 3, 2016, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on June 29, 2016. Claimant participated personally and was represented by counsel, Aron Vaughn, and had witnesses Ashley Bown, Lindsay Horbach, and Denise Bacon. Employer participated by Elizabeth Crandon. Claimant's exhibit A and Employer's exhibits 1, 4 and 5 were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on May 13, 2016. Employer discharged claimant on May 13, 2016 because claimant had poor work performance and committing an act of insubordination.

Employer alleged that on May 11, 2016 claimant committed poor work performance through two acts. Claimant was accused of acting inappropriately around a patient. The patient created a mess when defecating. Claimant came into the room where a patient was apologizing for her defecating and stated, "Oh my, I'd better get this out of here." Claimant then grabbed the dirty commode, took it into another room and cleaned the commode. Additionally, on the same date, employer stated that claimant didn't want to use proper procedures to transfer a patient from a bed to a transport. The patient's transfer instructions stated that a lift was to be used. When claimant's supervisor suggested using a lift to transfer the patient, claimant demurred. The patient's charge nurse who was in charge of the patient's cares came into the room, she suggested claimant's method of transfer. That was the method that was used to transfer the patient.

Claimant's act of alleged insubordination also occurred on May 11, 2016 when claimant was found using a work computer to submit private homework to the college she was attending. On

January 5, 2016 claimant received a type B offense written warning for engaging in private activities while on company time and using a company computer. Under company policies, type B offenses normally move from a written warning to a suspension and then to termination. Employer stated that the reason why claimant's actions prompted an immediate termination was because claimant had previously received a warning.

Claimant stated that her actions of using the employer's computer for private purposes were only done during down times. Claimant brought in multiple witnesses who stated that every day multiple employees who worked in the emergency room area where claimant worked used the company computers to do private searches.

Claimant also stated that she was removed from the advanced schedule completely days before she was terminated. On May 10, the day before the occurrences that allegedly led to claimant's termination, claimant saw that she hadn't been scheduled. Claimant asked her supervisor why this had occurred, but received no response.

Employer did not bring forward any witnesses who had firsthand knowledge of the incidents that led to claimant's termination. Claimant's supervisor, who brought forth all of the allegations, was working at the hospital, but not made available for the hearing.

REASONING AND CONCLUSIONS OF LAW:

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(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.

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 claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Henry* supra. 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 deemed misconduct within the meaning of the statute. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

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*, 462 N.W.2d at 737. The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. 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).

Employer in this matter chose not to produce any witnesses with direct first-hand knowledge of claimant's alleged improper actions. Although the main witness for employer was working at the time of the hearing and immediately available, employer chose not to have that witness testify at the hearing. When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976).

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning use of the company computer for private purposes. As claimant has brought forth numerous uncontroverted witnesses who stated that it is common practice for employees to use the company computer during slow hours – including claimant's supervisor, employer's reasoning for the termination loses the heft it might otherwise have. It appears as though the policy was not applied uniformly amongst the employees, with the supervisor not only applying the rule to certain employees and not to others, but the supervisor also blatantly acting in contravention of the rule herself. In addition to this, claimant is the only party to offer testimony about the other reasons stated by employer for termination. Claimant's testimony regarding both of the alleged incidents that led to her termination was very credible – especially in light of the fact that there was no other testimony offered.

Another aspect of this matter that weighs on the administrative law judge's decision is the fact that claimant was given no hours on her schedule the day prior to her alleged last acts that led to her termination. Employer would not respond as to why this occurred when asked by claimant.

The last incident, which brought about the discharge, fails to constitute misconduct because employer has not shown that claimant's acts were any different than all other coworkers' actions that were allowed by employer. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated June 3, 2016, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/pjs