

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

STACEY R WHARTON
Claimant

BROADLAWNS MEDICAL CENTER
Employer

APPEAL NO. 14A-UI-03690-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/09/14
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated March 31, 2014, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on April 28, 2014. Claimant participated personally. Employer participated by Julie Kilgore, Vice President Human Resources and Susan Kirstein, Chief Nursing Officer. Exhibits One through Eight was 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 March 12, 2014.

Employer discharged claimant on March 12, 2014 because claimant failed to report abusive treatment of a patient on February 25, 2014. Intensive care employees yelled at a patient that was unresponsive in front of claimant. The ICU nurse told the claimant to respond or they would stick tubes up his nose, down his throat and up his dick. Claimant did not hear the statement when it happened because she was preoccupied trying to start an I. V. The situation was chaotic. After the fact claimant did speak to the behavioral staff who told claimant the specific statements. Claimant tried to handle the matter informally. Claimant failed to report the abusive treatment in a formal manner. Claimant is a mandatory reporter. Claimant defended her failure to report because she felt it was ok to speak to a patient on their level since the patient was from the behavioral health unit. The nurse was allegedly trying to speak on in graphic terms because they thought the patient was feigning symptoms due to his being from behavioral health. Using correct medical terminology would not have informed the patient of what medical treatment was necessary. The abusive treatment was observed by multiple employees. Employer's policy makes claimant a mandatory reporter of adult abuse. Employer discharged claimant under a variety of rules that place upon claimant a duty to report and protect patients. Employer had not issued claimant any prior warnings for any reason prior to this incident.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 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.

871 IAC 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.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning failure to report abuse. Claimant was not warned concerning this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because this is an isolated instance of poor judgment on a clean record of employment. While claimant made a poor judgment call this does not rise to the level of misconduct. Claimant should have filed a formal report on the incident. The lack of a formal prior warning weighs against a finding of intentional policy violations. An isolated instance of poor judgment on a clean record of employment is not misconduct. Such poor judgment should not bring about discharge on the first offense. Employer could have suspended without pay to correct such behavior. Claimant acted in good faith when trying to resolve the issue informally. In summary, this is a poor judgment call and not an intentional policy violation. 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 March 31, 2014, reference 01, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs