

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ANGELA BEIK**  
Claimant

**ST LUKES METHODIST HOSPITAL**  
Employer

**APPEAL 18A-UI-05214-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/01/18**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the April 25, 2018, (reference 02) unemployment insurance decision that denied benefits based on her discharge for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on May 24, 2018. The claimant participated and testified. Aaron Beik also participated on behalf of the claimant. The employer participated through Human Resource Business Partner Katie Sievert, Emergency Department Manager Jo Ellen Frommelt, and Director of Emergency Services Sandi McIntosh. Employer's Exhibits 1 and 2 were received into evidence.

**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 part time as an RN in the emergency department from August 16, 1990, until this employment ended on April 11, 2018, when she was discharged.

On March 18, 2018, claimant came in to the hospital and had a conversation with two coworkers, a nurse and a flight paramedic. During this conversation claimant revealed she had come in for the purpose of obtaining emergency contraceptive, but was hoping to be able to talk to a doctor without having to check-in as a patient. Claimant then revealed she had sexual intercourse with a 16 year old male. The male was not a patient or anyone claimant had a relationship with through the employer, but was a family friend. Claimant's coworkers then reported this conversation to management.

On March 19, 2018, claimant came in to work and spoke with Frommelt and McIntosh. Claimant was informed she was being suspended effective immediately. McIntosh testified throughout the meeting claimant kept repeating she had made a mistake and later came back and asked if McIntosh was mad at her. Claimant testified she did not recall making either of these statements. Formal criminal charges related to this incident were filed against claimant

on April 11, 2018. Upon learning of the criminal charges the employer discharged claimant from employment for violating its policy regarding conduct detrimental to hospital operations or patients. (Exhibits 1 and 2). The employer did not conduct its own internal investigation, but believed the criminal charges supported what claimant's coworkers reported being told on March 18. The employer acknowledged it has not received any additional information from the criminal investigation. The criminal charges are still pending and claimant maintains she is not guilty.

According to claimant, on March 18, 2018, she took a prescription Ambien after a night of excessive drinking. Claimant testified she did not realize combining alcohol and a sleep aid was not recommended or could be dangerous. Claimant acknowledged she had an interaction with a male minor, but testified he sexually assaulted her. Claimant went to the local hospital to get emergency contraceptive, though she testified such medication does not require a prescription and the individuals she spoke with were not authorized to issue prescriptions. Claimant did not check in as a patient, report she had been sexually assaulted, or ask to have a sexual assault exam performed. Claimant also did not mention the sexual assault allegation on March 19 when she met with Frommelt and McIntosh. Claimant testified she did not do these things because she did not even realize she had a sexual encounter until later in the evening on March 19. Claimant testified she did not report the alleged assault right away upon the advice of her former attorney. Claimant acknowledged that if the allegations are shown to be true, her nursing license would be at risk, but testified as of the date of her separation her license was still valid.

#### **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.

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.

A lapse of 11 days from the final act until discharge when claimant was notified on the fourth day that his conduct was grounds for dismissal did not make the final act a "past act." Where an employer gives seven days' notice to the employee that it will consider discharging him, the date of that notice is used to measure whether the act complained of is current. *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988). An unpublished decision held informally that two calendar weeks or up to ten work days from the final incident to the discharge may be considered a current act. *Milligan v. Emp't Appeal Bd.*, No. 10-2098 (Iowa Ct. App. filed June 15, 2011). In reviewing past acts as influencing a current act of misconduct, the ALJ should look at the course of conduct in general, not whether each such past act would constitute disqualifying job misconduct in and of itself. *Attwood v. Iowa Dep't of Job Serv.*, No. \_\_-\_\_, (Iowa Ct. App. filed \_\_, 1986).

Here, the employer knew about the allegations on March 18, 2018 and placed claimant on an indefinite suspension. Claimant was not discharged until April 11, 2018 when formal criminal charges were filed against her. The employer did not conduct its own investigation, but found the fact that claimant was criminally charged corroborated what she reported to her coworkers. As the employer knew about the allegations on March 18, but did not discharge her until

April 11, 2018, it may not be able to show a current act of misconduct. The employer did not learn any additional facts between March 18 and April 11, other than criminal charges being filed, and there has been no final disposition of that case. Even if the act is current, the employer has failed to establish the alleged misconduct was related to claimant's work at the hospital.

Both parties agree the minor involved was not a patient of claimant's or being treated by her in any way, but rather he was a family friend. The alleged conduct did not occur on work time or in the course of claimant's job duties with this employer. While the claimant admitted that, if the allegations proved true, her nursing license would be at risk, claimant still had a valid license at the time of her separation. While claimant's conduct, if true, is certainly inappropriate and possibly illegal, the employer has failed to show it was related to her employment. Accordingly, benefits are allowed, provided claimant is otherwise eligible.

**DECISION:**

The April 25, 2018, (reference 02) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs