

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JODY M GREENE
Claimant

FOUNTAIN HEALTH CENTERS INC
Employer

APPEAL 20R-UI-07254-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Jody Greene (claimant) appealed a representative's April 29, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits after a separation from work with Fountain Health Centers (employer). This administrative law judge issued a decision on May 28, 2020, affirming the representative's decision. A decision of remand was issued by the Employment Appeal Board on June 30, 2020. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 5, 2020. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Chris Anderson, Administrator. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 23, 2017, as a full-time certified nursing assistant. She signed for receipt of the employer's handbook on May 23, 2017. The employer had a policy that employee's had to report absences two hours in advance of the start of the shift. The employee also had to contact three co-workers to try to find coverage for the shift. When Covid-19 started, the employer had a policy that sick employees had to come to work and be assessed by the employer before they could be absent from work for illness. As of March 22, 2020, the employer had enough Covid-19 tests available, that it could test its workers. The claimant was unaware of this and the employer never tested the claimant.

On Sunday, March 22, 2020, the claimant called the employer at 8:20 p.m. and reported that her husband had been exposed to Covid-19 at his work. He had a fever and was coughing. The claimant was also coughing. The claimant asked the director of nursing (DON) if she should appear for her shift at 6:00 a.m. on March 23, 2020. The DON told the claimant she should appear for work if she did not have a fever. The claimant called three co-workers and

could not find anyone to work for her on March 23, 2020. She called 211 and was told there were not enough tests in the State of Iowa for the claimant to be tested.

At 4:40 a.m. on March 23, 2020, the claimant woke up with a fever. She immediately called the employer and spoke to the nurse on duty. She told the nurse she would not be at work because she had a fever and gave the names of the co-worker's she called to cover her shift. The claimant also called in sick with a fever and coughing on Tuesday, March 24, 2020.

A co-worker told the claimant she had to return to work or she would be in trouble. On Wednesday, March 25, 2020, the claimant woke without a fever and she returned to work. At noon on March 25, 2020, the DON issued the claimant a warning for her absences on March 23 and 24, 2020. The claimant left the DON's office and closed the door. She did not mean to slam the door, but it closed harder than she intended and made a noise. The claimant was upset about the reprimand but said nothing to co-workers or residents. The administrator and DON thought the claimant slammed the door.

The administrator and DON went to the claimant and asked her to enter the break room for a meeting. In the break room, the claimant wanted to explain her reasons for the absences. The DON told her to be quiet and go home. On March 26, 2020, the employer terminated the claimant for slamming the door and being upset about the reprimand.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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(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(4) provides:

(4) 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.


The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation.

The employer terminated the claimant for shutting the door too loudly and answering the employer's questions. When she was asked about why she was upset and started to explain, the employer told her to be quiet and go home. The employer's witness was present at the final incident but was unable to remember anything the claimant said that was offensive. The claimant had not been warned about her behavior in the past.

Inasmuch as the employer had not previously warned the claimant about any of the issues leading to the separation, it has not met the burden of proof to establish the claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer did not provide sufficient evidence of job-related misconduct. It did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's April 29, 2020 decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

A rectangular box containing a handwritten signature in cursive script that reads "Beth A. Scheetz".

Beth A. Scheetz
Administrative Law Judge

August 13, 2020
Decision Dated and Mailed

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