IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

Elizabeth Riedl Claimant **Ida County Community Hosp Inc** Employer	**CASE NO. 22IWDUI0086** **APPEAL 22A-UI-01446** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 11/7/21** **Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant filed a timely appeal from the December 7, 2021 unemployment insurance decision denying benefits on the basis that the claimant was discharged from work on November 10, 2021, for violation of a known work rule (reference 01). The parties were properly notified of the hearing. A telephone hearing was held on February 17, 2022. The claimant participated and was represented by attorney, Stuart Higgins. Neither the employer nor a representative for the employer called in for the hearing.

Official notice was taken of the documents in the administrative file. Neither party submitted exhibits.

ISSUES:

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The Employer hired the claimant on September 4, 2018. Claimant worked as a respiratory therapist and worked full-time. Claimant has been a respiratory therapist for 39 years. She had a set schedule working Tuesday through Friday 9:00 a.m. to 7:30 p.m. Her supervisor was Deanna Shupe, the Director of Respiratory Care. She was discharged from her position on November 10, 2021.

On or about, November 9, 2021, the claimant came into work at her regularly scheduled time, 9:00 a.m. At 9:30 a.m., she was asked to go see a patient who was in distress. The patient

should have received treatment at 7:00 a.m., but claimant's supervisor had not received an order requesting the breathing treatment. Claimant arrived in the patient's room and noted that the patient would benefit from a nebulizer and not an inhaler as the order stated. Claimant spoke to the charge nurse and asked her to speak to the doctor to see if the doctor would put in an order for nebulizer treatment, Lasix, and intravenous (IV) steroids. She came back for a treatment later and learned that the doctor had ordered an inhaled treatment. Claimant may have rolled her eyes at this time. Claimant came back, again, later and learned that the patient had a Foley catheter and that he was going to be getting IV treatment. The doctor had determined that the patient would need to be transferred to a hospital with a higher level of care. Claimant told the patient and his wife that it would be good for him to go to a hospital with a higher level of care.

The next day when the claimant came into work, she was told that she needed to go to Human Resources. She went to Human Resources where she was told that she was being terminated. Megan Wellendorf, the Human Resources Director, explained that claimant spoke about the patient in front of the family and that she made the hospital look bad when she agreed that it would be good for him to go to a hospital that has a higher level of care. Additionally, claimant believes that the nurse complained that claimant had made her look bad in front of the patient. The employer did not provide information regarding the rule that claimant had violated. Claimant believes that the rule she violated was a general rule of rudeness.

Claimant was not given an opportunity to explain her position. She was not interviewed as part of an investigation into the incident. She believes that there was a misunderstanding. She was just doing her job and trying to help the patient.

Claimant had been issued two warnings prior to her termination. In June of 2021, claimant had been given a verbal warning because she had been called to help in the emergency room (ER). Claimant asked the nurse what the condition of the patient was in order to determine whether she needed to bring any equipment with her. When she arrived in the ER, she asked that the nurse help her enter the patient information into the EKG machine because it is not one that she typically uses. The employer disciplined claimant on the basis that she had delayed going to the ER because she asked the condition of the patient and that she was rude to the nurse by asking her to help with the EKG machine. Claimant submitted a rebuttal to dispute the allegations, but the warning was not removed.

In October of 2021, claimant was issued another written warning. The October warning was about an incident that occurred in August of 2021. In August, claimant received a call regarding a COVID-19 patient who was being transferred to another hospital. The claimant was asked to put the patient on a BiPap machine. Claimant believed that the community standard was to not use a BiPap machine on a COVID patient because it aerosolizes particles. She explained this to the doctor as well as the charge nurse and nurse. The patient was the father of one of the nurses in the hospital. The Chief Nursing Officer, Emily Lange, issued a warning to the claimant. The discipline was issued because the employer believed that this incident made it look as if claimant cared more about the machine than she did about the patient.

Claimant does not know whether there is a specific rule against rudeness at the hospital. She also does not know of a rule that prohibits speaking about a patient's condition in front of the patient's family. Claimant believes that there is a progressive discipline policy, which includes a verbal warning, written warning, suspension, and termination. Claimant was never suspended. Claimant was never disciplined for her abilities and work performance

Additionally, claimant testified to several employees who have violated the rule of rudeness on numerous occasions and not been terminated.

REASONING AND CONCLUSIONS OF LAW:

There is no dispute that Claimant was discharged from her employment. This case therefore will be evaluated pursuant to Iowa Code § 96.5(2)a. For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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 Administrative Code rule 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).

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). Alleged violations of known company rules must rise to the level of misconduct to disqualify an individual for unemployment benefits. *See Billingsly v. Iowa Dep't of Job Serv.*, 338 N.W.2d 538 (Iowa Ct. App. 1983). The final incident leading to the decision to discharge must be a current act of misconduct. *See Greene v. Emp't Appeal Bd.*, 426 N.W.2d 629 (Iowa Ct. App. 1988).

"Unemployment statutes should be interpreted liberally to achieve the legislative goal of minimizing the burden of involuntary unemployment." *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6, 10 (Iowa 1982).

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. However, if the employer 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. *See Billingsly*, 338 N.W.2d 538.

In this case, claimant credibly testified that she was terminated based on talking about a patient in front of his family and also about telling the patient and his family that going to a higher level hospital would be good for him. The latter comment was made after the doctor had already made the decision to send him to another hospital. There may also have been an issue of the claimant tacitly showing disrespect to a nurse. Claimant further provided credible testimony that there is no rule that prevents medical staff from speaking about a patient in front of his family, especially as in this case, speaking in front of a patient's wife. With respect to disrespecting another member of the medical staff, it appears that claimant had been disciplined for being rude previously.

The final incident that led to the discharge was based on a subjective interpretation of rudeness; a statement that it would be good for a patient to be in a higher level of care hospital, which was where patient was being transferred; and sharing information about the patient with a close family member. Claimant knew or should have known that behaving rudely may cause her to be disciplined as she was previously disciplined for rudeness. However, this awareness does not establish that claimant acted with "willful or wanton disregard" of employer's interest, creating a "material breach" of her employment duties. Nor has the employer proven that claimant acted with wrongful intent or evil design. *See, e.g., Billingsley v. Iowa Dep't of Job Servs.*, 338 N.W.2d 538, 540 (Iowa Ct. App. 1983) (distinguishing between standard for discharging an employee for known violation of work rules and standard to establishing misconduct sufficient to deny unemployment compensation). The claimant was taking care of the patient, who she was assigned, and was ensuring that he get the care he required for his condition.

To disqualify claimant from receiving unemployment benefits, it was employer's burden to prove she acted with willful or wanton disregard of the employers' interest, or exhibited recklessness or carelessness of such a degree as to suggest wrongful intent or evil design. No such evidence exists in the present case. Accordingly, the representative's decision must be reversed.

DECISION:

The December 7, 2021 unemployment insurance decision is **REVERSED**. The 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.

Alla R. Mintzer
Administrative Law Judge

February 28, 2021
Decision Dated and Mailed

ARM/aa

cc: Elizabeth Riedl, Claimant (by first class mail)
Stuart Higgins, Attorney (by first class mail)
Ida County Community Hosp Inc, Employer (by first class mail)
Natali Atkinson, IWD (by email)
Joni Benson, IWD (By AEDMS)

Case Title: RIEDL V. IDA COUNTY COMMUNITY HOSP INC

Case Number: 22IWDUI0086

Type: Proposed Decision

IT IS SO ORDERED.

Alla R. Mintzer Zaprudsky

Alla Mintzer-Zaprudsky, ALJ