

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JENNIFER C SARAZIN
Claimant

MERCY HEALTH SERVICES – IOWA CORP
Employer

APPEAL 14A-UI-12786-LT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/09/14
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 1, 2014, (reference 02) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on January 8, 2015. Claimant participated. Employer participated through human resource manager, Angela Faber and vice president of professional and support services, Sue Meade.

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 full time as a respiratory therapist and was separated from employment on November 13, 2014, when she was discharged. On October 29 she treated eight patients without reviewing the information in the reports (verbal, recording, or digital) from the previous therapist or care provider that provided the most recent treatment. The employer's procedure requires this so that the most accurate and safe treatment is provided to patients given the history or any changes in treatment. Respiratory therapist Chris Melon reported the concern to shift coordinator Diane Lincoln. Claimant admitted she did not listen to reports on a tape recorder or log in to the digital information because of the conversation between Melon and Lincoln offended her and she left the area where the recorder was. She did not take the recorder with her or log in to review the digital record before providing treatment.

She had been warned in writing on November 4, 2013, about failing to follow physician orders on November 3, to give a medication inhalation treatment for a pediatric patient and was described as being "argumentative and short" with the pediatric nurse. She was suspended on November 23, 2014, because of her failure to follow physician orders on November 21, 2014, related to placing a patient on a CPAP device but not work with the patient throughout the night and relying on the nurse's observations rather than her own. She was removed from the performance improvement plan in September 2014. She was warned in writing on October 24,

2014, about missing two physician orders (incentive spirometry treatment and placing the patient on oxygen) on October 23.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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).

The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless

indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

Workers in the health care industry reasonably have a higher standard of care required in the performance of their job duties to ensure patients' safety and health. That duty is evident by special licensing requirements. Claimant's repeated failure to perform her job duties to that standard of care after having been warned is evidence of negligence or carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. See Iowa Admin. Code r. 871-24.32(1)a. Benefits are denied.

DECISION:

The December 1, 2014, (reference 02) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css

NOTE TO EMPLOYER:

If you wish to change the zip code of record, please access your account at: <https://www.myiowauui.org/UITIPTaxWeb/>.
Helpful information about using this site may be found at:
<http://www.iowaworkforce.org/ui/uiemployers.htm> and
<http://www.youtube.com/watch?v= mpCM8FGQoY>