

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WHITNEY L SPIES

Claimant

APPEAL 18A-UI-06260-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABCM CORPORATION

Employer

OC: 04/22/18

Claimant: Appellant (2)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Whitney L. Spies (claimant) filed an appeal from the May 16, 2018, reference 01, unemployment insurance decision that denied benefits based upon the determination ABCM Corporation (employer) discharged her for engaging in conduct not in its best interest. The parties were properly notified about the hearing. A telephone hearing was held on June 25, 2018. The claimant participated. Liz Sillars from Unemployment Help Center, LTD represented the claimant and participated on her behalf. The employer participated through HR Leah Eicher. Administrator Krystal Klostermann was registered as an employer witness but did not participate in the hearing. The Department's Exhibits D1 and D2 were admitted into the record.

ISSUES:

Is the appeal timely?

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: The claimant was employed full-time as a CNA beginning on April 26, 2017, and was separated from employment on April 25, 2018, when she was discharged. The claimant was responsible for providing assistance and care to elderly residents. In December 2017, it was reported that the CNAs on the claimant's shift had failed to check on residents and perform the required cares. The claimant received a written counseling, the first step in the disciplinary process. Her supervisor at the time did not tell the claimant her job was in jeopardy or that further incidents could lead to her discharge.

On April 22, 2018, the claimant had assisted a resident to the restroom. The resident was allowed to be in the restroom by herself. The claimant told the resident she would be back to check on her when she used her call light indicating she was done and the resident agreed. The resident was wearing a call pendant and there was a call switch on the wall. The claimant then assisted staff with other residents. The claimant returned to the resident's room to check

on her after approximately 27 minutes. The resident had tried to stand up instead of using her call pendant or the switch on the wall and injured herself. The employer discharged the claimant three days later stating it would be better if they parted ways.

The unemployment insurance decision was mailed to the claimant's address of record on May 16, 2018. The claimant received the decision within ten days. The decision contained a warning that an appeal needed to be filed within ten days and gave a deadline of May 26, 2018. On May 24, the claimant had a friend fax the decision to her representative Liz Sillars. On May 26, Sillars, or someone at her company, emailed an appeal to Customer Service at uicclaimshelp@iwd.iowa.gov instead of the Appeals Bureau at uiappealshelp@iwd.iowa.gov. On June 6, Customer Service notified Sillars that an appeal needed to be submitted to the Appeals Bureau as instructed on the back of the decision. On June 7, Sillar resubmitted the appeal to the Appeals Bureau.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is timely and she was discharged from employment for no disqualifying reason. Benefits are allowed.

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The claimant's failure to file an appeal within the appeal period was due in part to agency delay. The claimant's appeal was due on Saturday, May 26. As the Monday was a holiday, the claimant's filing deadline was extended to Tuesday, May 29. The claimant filed an appeal by the deadline even though it was sent to the wrong department. However, it was not until June 6, that IWD notified her it had been sent to the wrong department. As soon as the claimant learned of the issue, an appeal was filed with the Appeals Bureau. The claimant timely filed an appeal and any delay was perpetuated by the agency. See, Iowa Admin. Code r. 871-24.35(2). Therefore, the appeal shall be accepted as timely.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.* Iowa Administrative Code rule 871-24.32(1)a provides:

“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).

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. 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).

What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The decision in this case rests, at least in part, upon the credibility of the parties. The employer did not present a witness with direct knowledge of the situation or the rules or standards of conduct that the claimant violated. No request to continue the hearing was made and no written statement of the individual was offered. As the claimant presented direct, first-hand testimony while the employer relied upon second-hand reports, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer.

While it is extremely unfortunate that the resident was injured, for purposes of unemployment insurance benefits, it is not the outcome of the claimant's conduct but the conduct itself that is analyzed when determining if a claimant is disqualified from receiving benefits. The claimant engaged in what she believed was proper conduct for the situation. The employer has not established that the claimant's conduct in leaving a resident in the restroom for 27 minutes was against its policies or procedures. The employer has not established that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Accordingly, benefits are allowed.

DECISION:

The claimant's appeal is timely. The May 16, 2018, reference 01, 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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn