

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

OCTAVIA M SIMMONS
Claimant

APPEAL 19A-UI-00339-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA ORTHOPAEDIC CENTER PC
Employer

OC: 12/02/18
Claimant: Appellant (2)

Iowa Code § 96.5(2) – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32 – Discharge for Misconduct

STATEMENT OF THE CASE:

Octavia Simmons, Claimant, filed an appeal from the January 9, 2019 (reference 03) unemployment insurance decision that denied benefits because she was discharged from work with Iowa Orthopaedic Center, PC due to failure to follow instructions in the performance of her job. The parties were properly notified of the hearing. A telephone hearing was held on January 29, 2019 at 3:00 p.m. Claimant participated. Employer participated through Michelle Stegman, Director of Human Resources. No exhibits were admitted.

ISSUE:

Whether claimant's separation was a discharge due to disqualifying job-related misconduct or a voluntary quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a Patient Experience Specialist from November 14, 2017 until her employment with Iowa Orthopaedic Center PC ended on December 3, 2018. (Stegman Testimony) Claimant's direct supervisor was Jenna Cox, Front Office Supervisor. (Stegman Testimony)

In April or May of 2018, claimant was moved to a busier clinic than the one in which she was trained. (Stegman Testimony) Claimant soon realized that many of her job duties were performed differently in the busier clinic and had to relearn how to perform some of her job duties. (Claimant Testimony) On June 28, 2018, claimant received a written warning regarding her job performance; the warning stated that further transgressions could result in her termination. (Stegman Testimony) On July 27, 2018, claimant received a verbal warning regarding her job performance from her supervisor. (Stegman Testimony) After the second warning, claimant was offered and completed additional training. (Stegman Testimony) On October 10, 2018, claimant received a final written warning regarding her job performance. (Stegman Testimony) The final warning stated that further errors may result in claimant's termination. (Stegman Testimony)

Claimant's errors included failing to attach information to appointments, scheduling errors and failing to reply to emails about errors. (Stegman Testimony) Claimant was able to perform each of these tasks correctly at any given time during her employment. (Stegman Testimony) However, claimant erred in performing the tasks when her work got busier. (Claimant Testimony) Claimant had made some improvement in reducing the number of errors since transferring to the busier clinic. (Claimant Testimony) During claimant's annual review on November 16, 2018, claimant's supervisor told claimant that she was improving and reducing her errors and challenged claimant to further reduce her errors to less than two or three per week. (Claimant Testimony) Claimant received a raise in pay with her annual review. (Claimant Testimony) Claimant performed her job to the best of her ability and did not believe that her job was in jeopardy. (Claimant Testimony)

On December 3, 2018, claimant made two errors in performing her job duties. (Stegman Testimony) Employer terminated claimant's employment on December 3, 2018 due to claimant's job performance. (Stegman Testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

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 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, 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).

Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552 (Iowa Ct. App. 1986). Claimant never had a sustained period of time during which she performed her job duties to employer's satisfaction. Inasmuch as claimant did attempt to perform the job to the best of her ability but was unable to meet its expectations, no intentional misconduct has been established. Employer has not met its burden of proving disqualifying, job-related misconduct. Benefits are allowed provided claimant is otherwise eligible.

DECISION:

The January 9, 2019 (reference 03) unemployment insurance decision is reversed. Benefits are allowed provided claimant is otherwise eligible.

Adrienne C. Williamson
Administrative Law Judge
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Decision Dated and Mailed

acw/rvs