

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MADLINE I BOGACZ

Claimant

APPEAL 17A-UI-01373-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HCI VNS CARE SERVICES

Employer

OC: 12/25/16

Claimant: Respondent (1)

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

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the January 26, 2017, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 28, 2017. Claimant participated. Employer participated through human resource business partner Jessie Riesberg and was represented by Jacqueline Jones. Employer's Exhibit 1 was received.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on May 7, 2014. Claimant last worked as a full-time registered nurse. Claimant was separated from employment on July 12, 2016, when she was terminated.

Employer provides care to patients in a home setting.

Employer has a policy requiring employees to document care provided to patients within one day of the care occurring. Claimant was aware of the policy. Due to medical restrictions, claimant was restricted to working only eight hours per shift whereas the regularly scheduled shifts for registered nurses last 12 hours. Employer told claimant that if anything happened at the end of her shift, she was required to pass the information on to the oncoming nurse to complete the care and/or documentation and she was not allowed to remain at work for more than eight hours.

On June 25, 2016, a patient fell at the end of claimant's shift. Claimant gave the information to the oncoming nurse and left.

An intellectually disabled patient with a fractured hip resides in the home in which claimant worked. The patient is a large person who requires two individuals to lift him. Employer installed alarms on the patient's bed that alert staff members when he attempts to leave his bed. On June 28, 2016, claimant was in the nurses' station with medications present on the counter. Claimant was preparing medication paperwork. The patient's alarm went off and claimant and the nurse's aide who was present ran to his room. Claimant left the door to the nurse's station open. Claimant and the aide arrived before the patient fell and got him safely back into bed. While claimant was in the patient's room, a quality assurance employee made a visit to the house in which claimant worked. The QA employee found the door to the nurse's station open with the medication on the counter. The other patients living in the home are bed bound. Claimant and the nurse's aide were the only other individuals present in the home until the QA employee arrived.

On June 30, 2016, claimant was reviewing the chart of the patient who fell on June 25. Claimant observed that information regarding the fall had not been entered and a physician had not been contacted. Claimant entered the information she had regarding the fall and marked it as a late entry. Claimant contacted a physician regarding the fall. On July 1, 2016, employer conducted an audit and learned the documentation for the patient who fell on June 25 was not completed until June 30, 2016.

On July 5, 2016, claimant received a written warning for leaving medication unattended on June 28.

On July 12, 2016, employer terminated claimant's employment for her failure to document the June 25 fall within 24 hours and for leaving medication unattended on June 28.

Other than the July 5, 2016, warning, claimant had never been previously warned for similar conduct.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason.

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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). 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).

"[M]ere negligence is not enough to constitute misconduct." *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 666 (Iowa 2000). A claimant will not be disqualified if the employer shows only "inadvertencies or ordinary negligence in isolated instances." 871 IAC 24.32(1)(a). When looking at an alleged pattern of negligence, previous incidents are considered when deciding whether a "degree of recurrence" indicates culpability.

In this case, claimant left medication unattended when she rushed out of the nurses' station to prevent a potentially fatal fall. Claimant also passed medical information on to a nurse at the end of her shift who did not complete paperwork as required. Claimant did not willfully violate employer's policies. At most, claimant is guilty of carelessness. Claimant had never been previously disciplined regarding similar conduct. To the extent claimant was careless, claimant's actions do not indicate "such degree of recurrence as to manifest equal culpability, wrongful intent or evil design" such that it could accurately be called misconduct. Iowa Admin.

Code r. 871-24.32(1)(a); *Greenwell v. Emp't Appeal Bd.*, No. 15-0154 (Iowa Ct. App. Mar. 23, 2016).

Employer has failed to establish claimant was terminated for job-related misconduct. Therefore, any issues regarding overpayment are moot and will not be discussed further in this decision.

DECISION:

The January 26, 2017, (reference 02) unemployment insurance decision is affirmed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

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