IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

DEB J CLEMENS Claimant **CARE INITIATIVES** Employer	**APPEAL 21A-UI-08769-JD-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 02/14/21** **Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

On March 29, 2021, the claimant, Deb Clemens, filed an appeal from the March 17, 2021, (reference 01) unemployment insurance decision that denied benefits based on a determination that she failed to follow instructions in the performance of her job. The parties were properly notified about the hearing. A telephone hearing was held on May 24, 2021. Claimant Debra Clemens participated personally. Employer, Nick Jedlicka, appeared personally and with employer's representative, Ted Valencia.

ISSUE:

Did the employer discharge the claimant for job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on December 21, 2015. Claimant worked as a full-time Manager of Housekeeping and Laundry at Heritage Specialty Care, a skilled nursing facility located Cedar Rapids, Iowa. She worked days, Monday through Friday, from 7:30 am to 4:00 pm. Claimant was separated from employment on February 18, 2021, when the employer discharged her for Misconduct. Specifically, not ensuring that an employee under her supervision was working hours and performing job duties that comported with work restrictions prescribed by his physician. Those restrictions mandated that this employee could work only 25 hours per week and each shift worked could not exceed five hours in length. This work restriction was presented to the claimant in December of 2020. She provided a copy of that work restriction to the Human Resources Manager of Care Initiatives, Rebecca Nisson.

It was the Claimant's responsibility, as supervisor, to ensure that the work restrictions were enforced.

From January 4 through February 12, 2021, the employee subject to the work restriction worked 22 shifts that exceeded the 5-hour maximum shift allowance required by the medical work restriction. The employer utilizes Day Force, a time keeping system that allows employees to

clock in at a time station located at the facility or via their personal smart phone. Claimant had access to this system. However, claimant was never trained on the system. If changes that needed to be made to an employee's time card, claimant had to turn in a hand written note to human resources. Human resources would then make any time changes. Claimant did not have access to the system that would allow her to monitor employees' time worked on a daily or weekly basis. Claimant had requested this information prior to December 2020 and afterward, as it related to the employee with the work restriction. She did not have access to any real time information relating to an employee's time keeping. Claimant scheduled the employee in question from 2:30 pm to 6:30 pm during the week and did not schedule him weekends per his requests. She made sure he was scheduled under the 25-hour weekly minimum required by the restriction.

Claimant was warned, on January 26, 2021, to monitor this particular employee's hours. She testified that she spoke with the employee on two occasions. Around February 10, 2021, the employee came to claimant requesting more hours. She counseled him that she could not schedule him in excess of his work restriction and that he should consult with his physician to determine if those work restrictions could be lifted.

The employee at the center of this discharge continues to work for Care Initiatives, has never been reprimanded for working hours he had not been scheduled to work, and the company has faced no adverse consequences related to the mandates of the work restriction.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 96.5(2) a provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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.

The employer has the burden to prove the claimant was discharged for job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer made the correct decision in ending claimant's employment, 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 justifying termination of an employee and misconduct warranting denial of unemployment insurance benefits are two different things. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

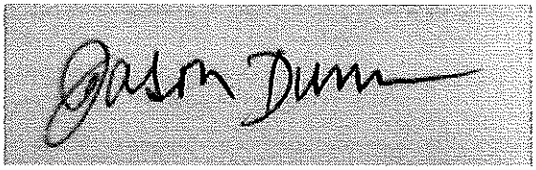
Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence is not misconduct 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).

One of claimant's job requirements was to ensure compliance with the medical work restrictions for employees under her supervision. However, the employer did not provide any of the tools necessary to ensure compliance with this work directive. Claimant was not provided with daily or weekly time keeping information, nor was she trained or given access to the time keeping system utilized by the employer. She could not edit any time information for any of her employees and was required to submit any changes in writing to HR. Claimant scheduled the employee under the five hour shift maximum and never requested him to come in early or stay past his scheduled shifts. The claimant indicated she constantly reminded the employee to be mindful of his time. There is no evidence this employee was forced or pressured to work excessive hours. Rather, this employee requested additional hours in early February. Claimant explained to him why that was not possible and told him to have a discussion with his physician.

None of the claimant's conduct rises to the level of willful or wanton disregard of the employer's interest that would disqualify her for benefits. Misconduct justifying termination and misconduct warranting denial of unemployment insurance benefits are two different things. *Pierce* at 212. The employer has not met its burden by presenting evidence that any of the claimant's actions were willful, wanton, deliberate, careless, or intentional. Claimant did her best to ensure compliance with the employees work restrictions with the tools she was provided. As misconduct has not been established.

DECISION:

The March 17, 2021, (reference 01) unemployment insurance decision is reversed. Benefits are allowed, provided claimant is otherwise eligible.



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June 3, 2021
Decision Dated and Mailed

jd/kmj