

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ANDREA L BRIDGES**  
Claimant

**GENESIS HEALTH SYSTEM**  
Employer

**APPEAL 18A-UI-00135-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/03/17**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Andrea L. Bridges (claimant) filed an appeal from the December 27, 2017, reference 01, unemployment insurance decision that denied benefits based upon the determination Genesis Health System (employer) discharged her for violation of a known company policy. The parties were properly notified about the hearing. A telephone hearing began on January 29, 2018 and concluded on February 1, 2018. The claimant participated. The employer participated through Human Resources Coordinator Tara Erpelding. Emily Barudin was sworn in as an employer witness but did not provide any testimony. The Claimant's Exhibit A was received without objection. The administrative law judge took official notice of the administrative record, specifically the documents provided by the employer for the fact-finding interview.

**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: The claimant was employed full-time beginning on October 8, 2007. As of 2015, the claimant worked as a Patient Services Coordinator and was responsible for obtaining insurance preauthorization for medical services to clients. The industry standard and the employer's expectation was that the claimant and her three co-workers would complete an average of 40 tasks per day. Prior to 2017, the claimant would complete an average of 70 tasks per day. The employer's disciplinary policy states that an employee will receive a first warning, second warning, and final warning before termination; however, it will occasionally issue multiple steps at the same time.

The claimant was discharged on December 6, 2017, for unsatisfactory job performance and working on a Saturday without receiving prior approval from a supervisor. The claimant reported to work on Saturday, December 2, 2017, because she had been sent home earlier in the week and wanted to make up some time. Additionally, from October 23 through November 30, the claimant averaged 18.43 tasks per day when she was in attendance at work. In contrast, her three co-workers averaged 43.25, 47.6, and 48.9 tasks per day for the same

timeframe. At the same time she was discharged, she was also given her final warning because she was using work time for non-work related activities.

The claimant received prior warnings related to performance and working on Saturdays. On July 6, 2017, she received a coaching and first written warning. The coaching was for a HIPAA violation and the warning was for productivity, using work time for non-work activities, and working overtime without authorization. She was told at that time she needed to average 40 authorizations per day. On October 20, 2017, she received a second warning related to productivity and using work time for work tasks. Her supervisor reiterated in the warning that she needed to average 40 authorizations per day.

### **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. Benefits are denied.

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).

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 the 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). 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). 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). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of*

*LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge attributes more weight to the employer's version of events.

The claimant's repeated failure to perform her job duties to the employer's standards after having been warned when she was capable of meeting the employer's standard is evidence of negligence or carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. The claimant was meeting her goals prior to June 2017. After receiving warnings with the standards and expectations outlined, she continued to work below standards, in part, due to time spent on her personal electronic device and other non-work related activities during work hours. The employer has met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Accordingly, benefits are denied.

**DECISION:**

The December 27, 2017, reference 01, 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.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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