

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HEIDI J MUELLER
Claimant

APPEAL 17A-UI-09401-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELKADER NURSING HOME COMPANY LLC
Employer

**OC: 08/20/17
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 September 5, 2017, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on September 29, 2017. The claimant did not participate. The employer participated through Administrator Kristin Dunlap. Official notice was taken of the administrative record.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any 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 was employed full time as a registered nurse from January 4, 2016, until this employment ended on July 7, 2017, when she was discharged.

In June 2017 the employer was notified by the Medicaid Fraud Control Unit that they had begun an investigation into allegations that claimant had neglected and fraudulently documented her care of a resident. Claimant was suspended pending the outcome of the investigation. The allegations came to light when a family member of the resident reported that hidden camera footage showed claimant and another nurse failing to do proper assessments and administer medication on the resident after she suffered a fall on March 10, 2017. The camera footage was turned over to authorities and the employer has been unable to view it, but testified it has reason to believe the camera had been tampered with, leading to questions of authenticity of the footage. The employer conducted its own investigation, including interviewing the claimant and other nurse, who both insisted they provided the care that was documented. The employer

found all the patient care documentation to be in order. Formal criminal charges were filed against the claimant in July 2017. Dunlap testified that, without having seen the footage, she is not sure if claimant engaged in the behavior as alleged, but the decision was made to discharge her from employment nevertheless upon the advice of legal counsel.

The claimant filed a new claim for unemployment insurance benefits with an effective date of August 20, 2017, but has not made any claims for benefits to date. The employer participated in a fact finding interview regarding the separation on September 5, 2017. The fact finder determined claimant qualified for benefits.

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 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 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.

871 IAC 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 Department of Job Service*, 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 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).

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. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Claimant was discharged following an allegation that she engaged in fraud and dependent adult abuse. The employer conducted an internal investigation, but did not have all the evidence and was unable to affirmatively substantiate the claims made against claimant. The employer's investigation found claimant's documentation to be in order and Dunlap testified she is not sure if claimant engaged in the conduct as alleged, based on questions regarding the authenticity of the camera footage. The decision was made, nevertheless, to discharge claimant from employment after criminal charges were filed. Inasmuch as the employer itself is not certain that claimant actually engaged in the conduct for which her criminal charges and subsequent discharge were based upon, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed, provided claimant is otherwise eligible. As benefits are allowed, the issues of overpayment and participation are moot.

DECISION:

The September 5, 2017, (reference 01) unemployment insurance decision is affirmed. 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. The issues of overpayment and participation are moot.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs