

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GENEVA M FORTNER
Claimant

PRESBYTERIAN HOMES AND SERVICES
Employer

APPEAL 19A-UI-01317-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/25/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Geneva Fortner, Claimant, filed an appeal from the February 7, 2019 (reference 05) unemployment insurance decision that denied benefits because she was discharged from work with Presbyterian Homes and Services due to violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on February 28, 2019 at 1:00 p.m. Claimant participated via written statement. Employer participated through Betty Stone, Human Resources Representative; Christina Michael, Clinical Administrator; and Micque Brickson, Home Care Services Coordinator. Claimant's Exhibit 1 was admitted. Employer's Exhibits A – G were admitted.

ISSUE:

Whether claimant's separation was a discharge due to disqualifying job-related misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a Resident Assistant from February 20, 2018 until her employment with Presbyterian Homes and Services ended on November 26, 2018. (Stone Testimony) Claimant's direct supervisor was Christina Michael. (Stone Testimony)

Resident assistants are required to complete daily assignment records to document their activities with various residents throughout their shift. (Stone Testimony) The daily assignment records are a state requirement and serve as a communication tool to guide residents' care. (Stone Testimony; Michael Testimony) Resident assistants receive training on how to complete the daily assignment records and are instructed to "chart as you go." (Michael Testimony) It is important for resident assistants to document activities on the daily assignment records as they are completed; if a resident assistant needs to leave work unexpectedly during a shift, a coworker can complete the remaining activities for the resident. (Michael Testimony) If a resident assistant fills in a daily assignment record prior to completing an activity (e.g. by

estimating what time the activity will be completed) and then leaves work early, that activity may not be completed if coworkers believe it was already done. (Michael Testimony)

On November 19, 2018 at approximately 10:00 a.m., employer retrieved the daily assignment records from the folder labeled “completed daily assignments.” (Brickson Testimony) Employer found claimant’s daily assignment record for November 19, 2018 in the folder. (Brickson Testimony) Claimant’s daily assignment record reflected activities completed between 10:00 a.m. and 2:15 p.m. (Exhibit B) Claimant’s form had future activities already documented as being completed. (Stone Testimony) Claimant had signed the form beside the following statement: “I certify that the above services were delivered as noted above. (Exhibit B) Employer placed claimant on administrative leave on November 19, 2018 while it investigated the matter. (Stone Testimony)

As a result of the investigation, employer discovered two daily assignment records reflecting activities being completed after claimant had left work early. (Stone Testimony; Exhibits C & D) For example, claimant submitted her daily assignment record on October 6, 2018 reflecting she assisted and supervised a resident with a C-pap machine at 10:00 pm; Claimant was scheduled to work from 2:00 p.m. until 10:30 p.m. on October 6, 2018 but left at 8:00 p.m. (Exhibit C, p. 4; Stone Testimony) The danger is that the activity may not have been completed. (Stone Testimony) Without use of the C-pap machine, the resident may experience respiratory distress and could die. (Stone Testimony)

Employer has a policy prohibiting the falsification of resident records. (Exhibit F, p. 2) The policy states that falsifying records may result in immediate termination. (Exhibit F, p. 2) The policy is included in the employee handbook and reviewed during orientation. (Exhibit F; Stone Testimony) Claimant received a copy of the employee handbook. (Exhibit F, p. 1) Employer discharged claimant on November 26, 2018 for falsification of documents in violation of employer’s policy. (Stone Testimony; Exhibit A) Claimant received no prior warnings for falsification of records but received two prior warnings for unrelated matters. (Stone Testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for disqualifying, job-related misconduct. Benefits are denied.

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). 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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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. 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).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Claimant's submission of falsified resident records is both a violation of employer's policy and a deliberate disregard of the standards of behavior employer had a right to expect from her. Claimant's misconduct is substantial given the potential consequences. Claimant's actions are disqualifying work-related misconduct. Benefits are denied.

DECISION:

The February 7, 2019 (reference 05) unemployment insurance decision is affirmed. Benefits are denied until such time as the claimant works in and has been paid wages for insured work equal to ten times claimant's weekly benefit amount.

Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, IA 50319-0209
Fax: 515-478-3528

Decision Dated and Mailed

acw/rvs

If you wish to change the employer's name or address of record, please access your account at:
<https://www.myiowaui.org/UITIPTaxWeb/>.
Helpful information about using this site may be found at:
<http://www.iowaworkforce.org/ui/uiemployers.htm> and
<http://www.youtube.com/watch?v= mpCM8FGQoY>