

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEPHANIE NEIMAN
Claimant

APPEAL 21R-UI-09738-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 08/02/20
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the November 24, 2020, (reference 01) unemployment insurance decision that denied benefits based upon claimant's discharge from employment for job-related misconduct. The parties were properly notified of the hearing. A telephone hearing was held on June 22, 2021. The claimant, Stephanie Neiman, participated personally. The employer, The University of Iowa, participated through Jessica Wade. Employer's Exhibits 1 and 2 were admitted.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a hemodialysis technician. She was employed from August 2, 2010 until July 29, 2020. On July 29, 2020 claimant was discharged from employment.

Claimant was provided documented discipline on November 29, 2017; April 24, 2019; July 5, 2019 and November 1, 2019. In 2019 claimant was absent January 14, 16 and 19; April 17; June 21 and 24; July 24; and September 9, 16 and 18. Claimant was again absent April 11 and 13, 2020. On July 29, claimant's employment was terminated for a patient complaint and poor communication with her supervisor. The employer did not use the unplanned absences in the discharge determination.

On November 10, 2020, a patient had cancelled his appointment and claimant requested another patient be called to come in earlier. The charge nurse disagreed with claimant and did not call another patient to come in early. Claimant became upset and confronted the Charge nurse on the treatment floor in front of other patients. Claimant then left her shift early without notifying management.

A patient complained about the claimant stating the claimant was rude and unprofessional.

On claimant texted her nurse manager, Jan. In the text to her nurse manager, claimant used profanity, called her manager a bully, and stated she was not a nice person. Claimant sent an apology email to Jan later.

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.

As a preliminary matter, I find that Claimant did not quit. Claimant was discharged from employment for job-related misconduct.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment but not for job related misconduct. Benefits are allowed

As a preliminary matter, I find that the Claimant did not quit. Claimant was discharged from employment.

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).

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.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Further, 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). 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 focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* 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). Further, 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). 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).

Repeated conduct of aggressiveness with co-workers can be misconduct if done after repeated warning. A lapse of a few days does not make an act a past act rather than a current act because claimant was told there would be a future meeting. *Greene v. Employment Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

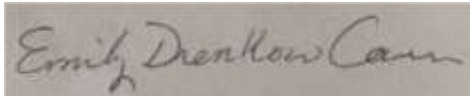
The two bases for the termination simply are not substantial enough to be disqualifying of benefits. One being a single patient complaint of a 'he said she said' type situation where the employer chose to believe the patient. The other was a single instance of rude and unprofessional language used toward the claimant's supervisor in front of a patient. In the end, however, the burden falls upon the employer to prove benefit disqualifying misconduct. The employer has an obligation to prove it through the best report possible. Here, the employer failed to provide any testimony from the department itself. What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. While the employer may have had adequate

justification for terminating the claimant's employment, it has failed to prove the claimant committed disqualifying misconduct.

The employer has failed to meet its burden of proof of establishing job related misconduct which would disqualify her from receiving benefits. Benefits are allowed.

DECISION:

The November 24, 2021, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment but not due to job-related misconduct. Benefits are allowed.



Emily Drenkow Carr
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July 09, 2021
Decision Dated and Mailed

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