

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAREN F LASSEN
Claimant

MERCY MEDICAL CENTER – CLINTON INC
Employer

APPEAL 22A-UI-06007-DB-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 01/30/22
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the March 3, 2022 (reference 01) unemployment insurance decision that denied regular State of Iowa funded unemployment insurance benefits based upon claimant's discharge from work. The parties were properly notified of the hearing. A telephone hearing was held on April 18, 2022. The claimant participated personally. The employer participated through witnesses Lexie Hammond and Lori Iben. Michael Baughman represented the employer. Employer's Exhibits 1 through 4 were admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

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: Claimant was employed as a registered nurse beginning on November 1, 2004. She was on PRN status (on-call) and worked two or three shifts per month for the employer at the time of separation from employment.

On July 8, 2021, the claimant was notified via email that she would be required to either obtain a COVID-19 vaccination or submit a request for exemption. The employer's policy required that an exemption be submitted on or before August 20, 2021. If the exemption was not granted under the policy, then employees were required to be vaccinated against COVID-19 on or before September 21, 2021. See Exhibit 3. The policy provided that non-compliance would result in disciplinary action up to and including the employee's termination of employment. See Exhibit 1.

Claimant did not get vaccinated against COVID-19 by August 20, 2021 and she received a letter in the mail dated September 29, 2021 stating that she was given an additional two-week grace period to receive her vaccination. See Exhibit 3. Claimant did not receive a vaccination against COVID-19 on or before the two-week grace period ended and she was discharged from employment on October 21, 2021. See Exhibit 4.

Claimant had filed a request for religious exemption with the employer on August 22, 2021, which was after the date that was required for her to file the request. Because it was late, her request for exemption was denied. No reason as to why the exemption was filed late was given by the claimant. Claimant did not contact the employer after the September 29, 2021 letter regarding her intentions to get vaccinated.

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 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.

The employer has the burden of proof in establishing disqualifying job-related 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). 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)(emphasis added).

On October 29, 2021, Governor Reynolds signed into law House File 902, which, among other things, amended Iowa Code Chapter 96 to include a new section 96.5A. Section 5 of House File 902 provided that the act would take effect upon enactment. The new section 96.5A provides:

Notwithstanding any other provision of this chapter to the contrary, an individual who is discharged from employment for refusing to receive a vaccination against COVID-19, as defined in section 686D2, shall not be disqualified for benefits on account of such discharge.

Because Iowa Code section 96.5A was not in effect when the claimant was discharged on October 21, 2021, it shall not be applied retroactively. As such, this matter must be analyzed under Iowa Code section 96.5 as it existed on the date of discharge.

Insubordination does not equal misconduct if it is reasonable under the circumstances. The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.*, 367 N.W.2d 300 (Iowa Ct. App. 1985). See also *Boyd v. Iowa Dep't of Job Serv.*, 377 N.W.2d 1 (Iowa Ct. App. 1985). Misconduct must be substantial in nature to support a disqualification from unemployment benefits. *Gimbel v. Employment Appeal Bd.*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992). The focus is on deliberate, intentional, or culpable acts by the employee. *Id.* Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

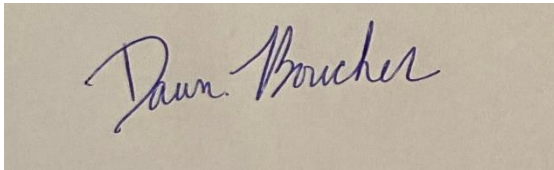
The employer's change in policy to require employees working as registered nurses to become vaccinated against COVID-19 or file an exemption is reasonable given the nature of the claimant's employment in healthcare and contact she has with patients. In this case, the claimant was notified in July of 2021 of the employer's reasonable change in policy to mitigate the spread of COVID-19. Claimant was given an option to either become vaccinated or submit a timely request for exemption. Claimant did not submit a timely request for exemption. No

reason why the claimant failed to submit a timely request for exemption was given. Claimant was given additional time to comply with the policy in the letter dated September 29, 2021 by becoming vaccinated; however, she did not do so. Further, when she received the letter dated September 29, 2021, she did not contact the employer to discuss with it any reasonable reasons that she could not or would not comply with the policy.

These repeated acts of carelessness and negligence in failing to submit a timely request for exemption and failing to comply with the employer's reasonable policy shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. As such, substantial job-related misconduct has been established. Unemployment insurance benefits funded by the State of Iowa are denied as the separation from employment is disqualifying.

DECISION:

The March 3, 2022 (reference 01) unemployment insurance decision is affirmed. The claimant's separation was disqualifying. Unemployment insurance benefits funded by the State of Iowa are denied until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount after her October 21, 2021 separation date, and provided she is otherwise eligible.

A rectangular box containing a handwritten signature in blue ink that reads "Dawn Boucher".

Dawn Boucher
Administrative Law Judge

April 21, 2022
Decision Dated and Mailed

db/jh