

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MICHELLE A POWELL**  
Claimant

**ADAIR COUNTY MEMORIAL HOSPITAL**  
Employer

**APPEAL 21A-UI-21525-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/08/21  
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/appellant, Adair County Memorial Hospital, filed an appeal from the September 17, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 20, 2021. The claimant, Michelle A. Powell, participated personally. Amber McFarland, Denise Tedrow and Aubrie Keller participated as witnesses for claimant. The employer participated through Julie Douglas. Amy O’Rourke and Jennifer Hoffman also attended. The administrative law judge took official notice of the administrative records. Employer Exhibits 1-23 were admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**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: The claimant was employed full-time as a registered nurse (RN) and was separated from employment on August 9, 2021, when she was discharged (Employer Exhibit 2). Claimant’s discharge documentation referenced housekeeping being advised to dispose of a wound vac machine in error, and for claimant’s alleged involvement in delaying care to a patient with COVID-19. Employer asserted the primary reason for discharge was the wound vac incident.

Claimant was trained on employer rules and procedures at the time of hire (Employer Exhibits 18-23). These included employer protocol on disinfecting and disposal of patient room items

(Employer Exhibits 11-17). The undisputed evidence is claimant had no prior warnings for similar conduct before discharge.

A patient admitted to the hospital had been issued a wound vac machine, a piece of expensive equipment rented by the hospital by a third party for patient use. The value of the machine is about \$12,000.00. Employer's contact with the third-party vendor also has a clause that states it will not recoup the loss of up to five machines due to loss (Employer Exhibit 3). The undisputed evidence is the patient left the hospital temporarily to visit his doctor. At the time he was with the wound vac machine. When he returned, the wound vac machine was never relocated. He was discharged from the hospital without the machine.

When he was discharged, claimant directed a housekeeper named Megan to clean "everything" out of his room. The claimant disputed ever referencing the wound vac by name for disposal.

This particular patient had a disposable air mattress, disposable pump, sheets, pillow, magazines, and toilet paper in his room. He also had leaked numerous body fluids and had seeping drainage from wounds that were visible within the room. At the time the directive was given by the claimant to Megan, she did not see the wound vac in the room. Megan never asked if she was to also dispose of a located wound vac. It was not until the employer received a bill from the third-party vendor for the wound vac, that employer recognized it had been lost.

Claimant denied seeing the wound vac, or directing Megan to dispose of the wound vac by name. Megan did not attend the hearing, but employer offered two written statements purportedly by Megan, written approximately six weeks after claimant's discharge, regarding her recollection of events (Employer Exhibits 4-5). Employer contacted the family of the patient (who had passed away between his discharge and the discovery of the missing wound vac) to see if it had been sent home in error with him. Employer did not contact claimant for an explanation of what she did or did not say to Megan about the cleaning of the room as part of its investigation, until immediately before executing the discharge. Employer asserted Megan threw away the wound vac at claimant's directive (Employer Exhibit 2, 4, 5).

Claimant denied seeing the wound vac in the room or directing Megan to dispose of the wound vac. Claimant acknowledged she did ask Megan to specifically dispose of the magazines, toilet paper, sheet and pillow. The sheet and pillow were to be disposed of due to holes created in them by the patient, which made them unfit for reuse. The magazines and toilet paper were to be disposed of due to the presence of body fluids, which would make them unfit for reuse. She was subsequently discharged.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$2,429.00, since filing a claim with an effective date of August 8, 2021. The administrative record also establishes that the employer did participate in the fact-finding interview or make a witness with direct knowledge available for rebuttal. Employer asserted Jennifer Hoffman attended. Administrative records reflect a voicemail was provided for the employer.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged, but not for disqualifying job-related misconduct.

Iowa unemployment insurance 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 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.

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. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

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 administrative law judge primarily considered the claimant's testimony, under oath, and subject to cross-examination, versus the written statements of Megan, a housekeeper, who did not participate and wrote her statements six weeks after claimant's discharge, at employer's request. The crux of this case is what claimant said to Megan, which led to Megan reportedly throwing away the \$12,000.00 wound vac. For unknown reasons, Megan did not attend the hearing. In the absence of any other evidence of equal weight either explaining or contradicting the claimant's testimony, it is held that the weight of evidence is established in favor of the claimant. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

At issue is whether claimant purposefully told a housekeeper to dispose of a \$12,000.00 piece of medical equipment. It is unclear by claimant telling Megan to dispose of additional items that were unable to be disinfected or cleaning "everything", that it would include the wound vac. Claimant did not see the wound vac in the room or specifically say to dispose of it. It is quite possible there was a miscommunication between the parties of what disposing of "everything" constituted. 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. Iowa Admin. Code r. 871-24.32(1)a. There is no evidence that claimant intentionally or purposefully directed Megan to throw away the wound vac. There is no evidence to support claimant was dishonest about the wound vac's whereabouts inasmuch as employer did not ask her about the incident until immediately before discharging her.

Therefore, based on the evidence presented, the administrative law judge concludes that the employer has not presented sufficient evidence to support its allegation of misconduct. Therefore, based on the evidence presented, the administrative law judge concludes the claimant was discharged but not for disqualifying job-related misconduct. Benefits are allowed, provided she is otherwise eligible.

Because the claimant is allowed benefits, the issues of overpayment and employer's relief of charges are moot.

The parties are reminded that under Iowa Code § 96.6-4, a finding of fact or law, judgment, conclusion, or final order made in an unemployment insurance proceeding is binding only on the parties in this proceeding and is not binding in any other agency or judicial proceeding. This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise.

**DECISION:**

The September 17, 2021 (reference 01) unemployment insurance decision is AFFIRMED. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. There is no overpayment. Employer is not relieved of charges.



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January 21, 2022

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Decision Dated and Mailed

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