

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HEATHER M SANTOS
Claimant

PINNACLE HEALTH FACILITIES XVII
Employer

APPEAL 19A-UI-09575-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 08/04/19
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from the November 19, 2019 (reference 04) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on January 2, 2020 at 3:00 p.m. Claimant participated. Employer did not participate. Claimant's Exhibit A was admitted.

ISSUE:

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

FINDINGS OF FACT:

As claimant was the only witness, the administrative law judge makes the following findings of fact based solely upon claimant's testimony: Claimant was employed as a full-time Certified Nursing Assistant and Bath Aide from August 26, 2017 until her employment with Pinnacle Health Facilities ended on October 17, 2019. Claimant worked Monday through Friday from 6:00 a.m. until 4:00 p.m. On October 17, 2019, claimant was suspended for giving a resident a "bad" haircut. Claimant's job duties included bathing and grooming residents. Claimant had given the resident a haircut in the past. Claimant received no prior warnings for giving patients haircuts or the quality of the haircuts. Claimant is not aware of any policy or procedure that the haircut violated. Claimant contacted employer several times to inquire as to the status of her employment but received no response.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Iowa Admin. Code. R. 871-24.32(9) provides:

(9) *Suspension or disciplinary layoff.* Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct

must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

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). 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).

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). A failure in job performance is not misconduct unless it is intentional. *Huntoon*, *supra*; *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

There is no evidence that claimant intentionally gave a resident a "bad" haircut or otherwise breached her duties to employer. Employer has not met its burden of proving disqualifying job-related misconduct. Claimant was discharged for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The November 19, 2019 (reference 04) unemployment insurance decision is reversed. Claimant was discharged for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Adrienne C. Williamson
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Decision Dated and Mailed

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