

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SANDRA K NELSON
Claimant

APPEAL 19A-UI-04235-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JP SENIOR HEALTHCARE LLC
Employer

OC: 04/21/19
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 17, 2019, (reference 01) unemployment insurance decision that denied benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on June 19, 2019. Claimant participated. Employer participated through administrator Stephanie Amick and director of nursing Carla Smith. Claimant's Exhibits A and B were received.

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 began working for employer on July 5, 2017. Claimant last worked as a full-time LPN charge nurse. Claimant was separated from employment on April 4, 2019, when she was terminated.

Employer has a policy prohibiting insubordination, improper language, and failure to maintain work standards. Claimant was aware of these general workplace expectations.

On April 4, 2019, claimant worked the night shift. Claimant left in the morning when her shift was over. When director of nursing Carla Smith arrived to work, two CNAs made complaints about claimant's behavior during the shift. One CNA reported that claimant made an inappropriate comment about the smell of a resident's bowel movement in front of the resident. The CNA also stated that claimant would not help her get the resident back in bed after cleaning her up. Both CNAs complained that claimant does not answer her fair share of call lights.

Smith then called claimant back into work. Smith planned on disciplining claimant for her actions, but did not plan to terminate her at that point.

Smith, assistant director of nursing Andrea McClure and the two CNAs met to discuss the complaints. Claimant denied engaging in the conduct. Smith excused the CNAs from the meeting. Smith told claimant they needed to talk about the complaints and resolve them. Smith told claimant they could all learn something new every day. Claimant rolled her eyes, made a dismissive noise, and stated, "Not you. You know everything." Smith became upset and stood up. Smith said, "I can't stand this. I can't stand to listen to this any longer." Claimant asked if she should resign. Smith told her she "might as well" and then terminated claimant and left the room.

On February 16, 2018, employer gave claimant a verbal warning about being rude to a resident.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be “substantial” to warrant a denial of job insurance benefits. *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). 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).

In this case, employer terminated claimant after a tense meeting that both claimant and director of nursing Carla Smith could have handled more professionally. The administrative law judge finds that claimant did make the comment, “Not you. You know everything,” but also finds claimant’s testimony that Smith was angry and unprofessional at times to be credible. If management wishes to be treated with respect, it must enforce respectful treatment amongst coworkers and supervisors and apply those expectations consistently throughout the chain of command.

Employer did not establish claimant made a rude comment to a resident and refused to do her fair share of work on April 4, 2019. Employer did not present testimony from the two CNAs in question to allow claimant an opportunity for cross examination. Employer did not present a written statement given by the resident in question. Claimant denies engaging in the conduct. While claimant’s comment during the meeting with Smith may have been disrespectful, the fact that she denied the allegations of misconduct does not mean she was being disrespectful to anyone. Claimant is entitled to deny the allegations if she does not believe they are true.

Finally, claimant’s only other discipline for disrespectful conduct was over a year earlier and was a verbal warning regarding a resident.

In conclusion, the administrative law judge finds employer failed to establish that claimant’s conduct during the April 4, 2019, meeting amounts to misconduct that would disqualify her from receiving unemployment insurance benefits. Instead, it was an isolated incident of poor judgment.

DECISION:

The May 17, 2019, (reference 01) unemployment insurance decision is reversed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/rvs