

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

MELODEE K BUTTLER

Claimant

APPEAL NO. 15A-UI-13557-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES

Employer

OC: 11/08/15

Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Care Initiatives (employer) appealed a representative's November 30, 2015 (reference 01) decision that concluded Melodee Buttler (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 30, 2015. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer was represented by Alyce Smolsky, Hearings Representative, and participated by Phyllis Farrell, Unemployment Insurance Consultant; Kathy Harris, Director of Nursing; and Jana Cates, Administrator.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 12, 2015 as a full-time licensed practical nurse. The claimant signed for receipt of the employer's handbook on August 12, 2015. On October 27, 2015, the employer issued the claimant a verbal warning for failure to perform duties. The employer notified the claimant that further infractions could result in termination from employment.

The claimant usually worked with two or three certified nursing assistants and one medication aid. On November 6, 2015, the claimant had two certified nursing assistants and did not have a medication aid to work with her. She expressed her displeasure and the employer asked her to be more pleasant and cooperative. The claimant discussed her day with a nurse who was interviewing for a job at the facility. She fed a patient who was in hospice care who had trouble swallowing.

On November 9, 2015, a resident's daughter reported to the employer that the claimant said she did not feed a resident because the employer short-staffed the facility. Without questioning the claimant about the allegations, the employer decided to terminate the claimant. The employer terminated the claimant on November 10, 2015.

The claimant filed for unemployment insurance benefits with an effective date of November 8, 2015. The employer participated personally at the fact finding interview on November 25, 2015 by Phyllis Farrell.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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).

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). 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 employer terminated the claimant based on the word of a resident's family member without corroboration. Clearly the claimant fed the resident. Told third hand during the hearing and without confirmation, the allegation lacks substance. In addition, the employer could not point to any policy the claimant violated.

An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as the employer had not previously warned the claimant about any of the issues leading to the separation, it has not met the burden of proof to establish the claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer did not provide sufficient evidence of job-related misconduct. It did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's November 30, 2015 (reference 01) decision is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/can