

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

---

**KELLY V FREEMAN**  
Claimant

**CATHOLIC HEALTH INITIATIVES IOWA**  
Employer

**APPEAL 15A-UI-01232-KCT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/28/14**  
**Claimant: Appellant (2)**

---

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the January 23, 2015, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 23, 2015. The claimant participated. The employer did not participate. Exhibit A was admitted into evidence.

**ISSUE:**

Was the claimant discharged for work-related, disqualifying misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as Director of Mercy Connect and was separated from employment on November 12, 2014, when he was discharged by his supervisor. (Exhibit A)

On November 12, 2014, the claimant was called to a meeting with his supervisor, Laurie Conner, and a human resources staff-person. Conner met briefly with the claimant and told him that he would be terminated effective immediately because he did not see the management of Mercy Connect, the same way that she did. Conner presented a packet of documents to the claimant. One document, dated November 12, 2014 and signed by Conner stated that the claimant's employment was terminated because his view of how to manage the Mercy Connect call center was inconsistent with hers. (Exhibit A) The letter outlined severance provisions he would receive including: transitional pay from November 13, 2014 through December 12, 2014; severance pay from December 13, 2014 to January 24, 2015, payment for accrued PTO to the beginning of his severance period, and COBRA options.

Conner left the claimant with a human resources manager to go through the termination paperwork. When the claimant asked why he was being terminated, the human resources manager referenced what Conner had previously stated in the meeting. The claimant was given a seven-page document entitled "General Release and Settlement" dated and signed on November 12, 2014 by Kevin Elsberry, Vice President and Chief Human Resources Officer of Mercy Medical Center. (Exhibit A) The claimant was asked to consider the document and

return it signed, if he agreed to the terms of the release and settlement. Doug took the claimant to his office to collect his personal things and escorted the claimant to his car. The claimant understood that he was terminated effective November 12, 2014. He later returned the signed settlement to the employer.

The claimant was surprised to be terminated because his most recent evaluation indicated that he was fully satisfactory in all areas and he exceeded expectations in two work areas. The evaluation was completed a few months before his employment was terminated. Supervisor Conner also gave the claimant a laudatory statement regarding his performance. (Exhibit A)

The claimant received no warning of a need to change his behavior. The employer identified no final act or incident of misconduct.

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

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

When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. Iowa Dep't Human Servs.*, 461 N.W.2d 603, 607 (Iowa Ct. App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14 (1). In making the evaluation, the fact-finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608. The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). Mindful of the ruling in *Crosser, id.*, and noting that the claimant presented direct, first-hand testimony while the employer relied upon second-hand reports, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer.

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 the 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.

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 did not participate in the hearing, no request to continue the hearing was made and no written statements of any witnesses on behalf of the employer were offered. The employer did not warn the claimant that his conduct needed to change. There is no identified act of misconduct. The claimant's most recent performance evaluation indicated that he met or exceeded expectations.

The employer has not met its burden of proof to establish a current or final act of misconduct. The claimant received no warning of the need to change his behavior. He was not advised that his job was in jeopardy. The claimant was not discharged from employment for a disqualifying reason.

**DECISION:**

The January 23, 2015, (reference 02) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

---

Kristin A. Collinson  
Administrative Law Judge

---

Decision Dated and Mailed

kac/pjs