IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

CAROL CHENEY Claimant **MERCY HEALTH SERVICES- IOWA CORP** Employer	**APPEAL 21A-UI-23309-SN-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 09/12/21** **Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Carol Cheney, filed an appeal from the October 15, 2021, (reference 01) unemployment insurance decision that concluded she was discharged from work on August 23, 2021 for failure to follow instructions in the performance of her job. The parties were properly notified of the hearing. A telephone hearing was held on December 10, 2021. The claimant participated and testified. The employer participated through Registered Nurse Amy Fisher, Senior Colleague Relations Partner Heidi Willret, and Director Connie Morrison. The employer was represented by Unemployment Insurance Representative Jennifer Pierce. Exhibits 1, 2, and 3 were received into the record.

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:

The claimant worked for the employer in several roles but most recently as a full-time clinic intake coordinator, Mercy Health Services Iowa Corporation, from February 22, 2016, until her employment ended on August 23, 2021, when she was discharged. The claimant worked a set schedule from 8:00 a.m. to 4:30 p.m. Monday through Friday. She reported directly to Director Connie Morrison.

On March 12, 2021, the claimant received a written warning. The written warning stated the claimant was receiving it due to inappropriate communication with her coworkers and supervisor and working unscheduled hours. This written warning stated that if the claimant failed to correct her behavior, that she would be placed on a performance improvement plan. The employer provided a copy of the written warning. (Exhibit 2)

On June 28, 2021, the claimant sent an email to a consultant complaining about her work environment.

On June 30, 2021, the claimant was placed on paid administrative leave for sending the email.

On July 6, 2021, the claimant received a written warning. The written warning observed the consultant did not work for the employer. It further observed that the claimant did not follow the chain of command to report her concerns before reaching out to the consultant. The written warning stated that failure to correct this behavior could lead to further discipline including termination. The employer provided a copy of the written warning. (Exhibit 3)

On July 6, 2021, the claimant also received a performance improvement plan (PIP). The PIP broke the claimant's behavior into three categories: (1) communication, (2) compliance, and (3) job skills. Under the tab for communication, the claimant was told she had been communicating over Halo too much with vague comments such as saying she is overwhelmed. It also said the claimant asked questions about information conveyed by leadership multiple times, like the new intake work standard. It also emphasized the claimant must follow up with customer needs to be done in the same day and if that cannot be done, then she needed to ask for help in a timely fashion before the end of the workday. Finally, the PIP admonished the claimant to speak in a professional manner consistently daily. The employer provided a copy of the written warning. (Exhibit 1)

On August 5, 2021, the claimant and Ms. Fisher met regarding specific information she would have to convey to a prospective client who wanted to place his wife in hospice. Specifically, Ms. Fisher instructed the claimant to tell the client that the wife could not be placed in hospice, despite being diagnosed with Parkinson's disease, because there was not any information in her file suggesting she had less than six months left to live. Ms. Fisher wanted the claimant to explain that the wife had not been infected and had not lost weight recently that would signal such a timeline until her passing. Although both Ms. Fisher and the claimant referred to this as a script during the hearing, it was just these pieces of information that needed to be conveyed so the client understood. The claimant then met with the client and conveyed that information as instructed.

On August 5, 2021, the claimant was also tasked with preparing the intake of another patient who had a neurological disorder that as it progressed would degrade his ability to speak. The neurological disease was not in the claimant's information for conducting the intake, so she spoke with the client's attending physician. This client did qualify; however, it was revealed through the course of obtaining this information that if the client received speech therapy, then the degradation of his ability to speak would not be as quick. After being told this information, the client said he would need to think about whether he would choose hospice or speech therapy going forward. His equivocation put the referral on hold. The claimant did not attempt to obtain additional medical records generated for the client at the Mayo Clinic because he had not decided on hospice yet. The claimant was afraid that given she knew he had yet to make his decision, that if she called his wife, it would look like she was pushing him in his decision regarding hospice. Admission Nurse Katina Blinkey was going to meet with the patient to obtain information regarding his decision.

On August 10, 2021, the claimant was placed on suspension. On that day, Ms. Morrison informed the claimant she was being placed on suspension due to the two incidents occurring on August 5, 2021. In the interim, the employer had determined the claimant had not used the right script, as instructed by Ms. Fisher, because the client complained and did not seem to be aware for why his wife was denied hospice care.

On August 16, 2021, the claimant met with Chief Nursing Officer and Vice President of Hospice Kim Chamberlin and gave the circumstances she believed vindicated her. Specifically, the claimant denied she deviated from the script given to her by Ms. Fisher and she said that Ms. Blinkey was going to take care of the other client. Ms. Chamberlin said she was not aware that Ms. Blinkey was going to meet with the client. She promised to check on that information.

On August 23, 2021, Ms. Morrison, Director of Human Resources Paul Kruthoff, and Ms. Chamberlin made the decision to terminate the claimant. The claimant was told she was not a good fit for the job.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to non-disqualifying circumstances.

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 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.

871 IAC 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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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). 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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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). 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).

The decision in this case rests, at least in part, on the credibility of the witnesses. 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*.

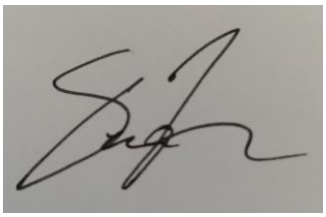
After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant's version of events to be more credible than the employer's testimony of those events.

Specifically, the administrative law judge finds the claimant's description of what she did and other circumstances regarding what occurred on August 5, 2021, more credible than the employer's testimony on those points. He does so because she is the only person who had firsthand knowledge and experience regarding whether she stayed with the script regarding the one client. The employer is relying on hearsay testimony of the client who could have been feigning ignorance given the understandable disappointment in his wife not qualifying for hospice. As for the other client, the claimant also has the best information regarding the circumstances regarding that client because she has firsthand knowledge regarding the physician's decision and the client's uncertainty about moving forward with hospice.

The administrative law judge concludes the claimant's behavior on August 5, 2021, were at worst good faith errors in judgment or discretion. The claimant stuck to Ms. Fisher's script regarding the one client. As for the other client, the claimant gave a rationale that does not run against the employer's interest. Such behavior cannot be substantial enough to constitute disqualifying misconduct. Benefits are granted, provided she is otherwise eligible.

DECISION:

The October 15, 2021, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment due to non-disqualifying circumstances. Benefits are granted, provided the claimant is otherwise eligible.



Sean M. Nelson
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January 20, 2022

Decision Dated and Mailed

smn/abd