

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MEREDITH E SCHLEIS

Claimant

APPEAL 20A-UI-10316-BH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEGG MEMORIAL HEALTH CENTER

Employer

OC: 05/24/20

Claimant: Appellant (2)

Iowa Code section 96.5(1) – Voluntary Quit

Iowa Administrative Code rule 871-24.25 – Voluntary Quit Without Good Cause

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

Iowa Administrative Code rule 871-24.32(1)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Meredith E. Schleis appealed the August 20, 2020 (reference 02) unemployment insurance decision that denied benefits. The agency properly notified the parties of the hearing. The undersigned presided over a telephone hearing on October 9, 2020. Schleis participated personally and testified. Hegg Memorial Health Center (Hegg) did not participate.

ISSUE:

Was Schleis's separation from employment with Hegg a layoff, discharge for misconduct, or voluntary quit without good cause attributable to the employer?

Did Hegg discharge Schleis for job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the undersigned finds the following facts.

Hegg hired Schleis on October 16, 2016. Schleis worked full time as a charge nurse. Her immediate supervisor was director of nursing, Cynthia Francis. Hegg discharged Schleis on May 20, 2020.

Schleis worked an overnight shift as a charge nurse that began at 6:00 p.m. on May 19 and ended at 6:00 a.m. on May 20. During Schleis's shift, she encountered a resident's record of medication that two registered nurses (RNs) had signed off on and another RN had written on the side of, making it messy and sloppy. Schleis created a new form and the nurse relieving her reviewed the form and signed off on it.

Schleis was unaware of any Hegg policy regarding creating a new form such as the record of medication. She had created a new record of medication form multiple times previously and never received any negative feedback, let alone a reprimand, about having done so. Schleis did not believe she had done anything wrong. Instead, she believed she had created a new form that was less sloppy and contained the information about the resident's medication.

Schleis left at the end of her shift. While driving home, Hegg telephoned her and summoned her back to work. Hegg questioned her about the form. Schleis explained what she did. When Schleis reported to work later that day for her shift at 6:00 p.m. on May 20, Hegg discharged her for destroying a medication record.

REASONING AND CONCLUSIONS OF LAW:

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

In appeals such as this one, the issue is not whether the employer made a correct decision in discharging 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).

Under Iowa Code section 96.5(2)(a), an individual is disqualified for benefits if the employer discharges the individual for misconduct in connection with the individual's employment. The statute does not define "misconduct." But Iowa Administrative Code rule 871-24.32(1)(a) does:

"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.

The Iowa Supreme Court has ruled this definition accurately reflects the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Administrative Code rule 871-24.32(4) states:

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.

Under Iowa Administrative Code rule 871-24.32(8),

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.

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). 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).

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). 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). Further, 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 order to deliberately disregard an employer's interests an employee must know at the time of the act that the act is wrong. In the current case, Hegg did not participate in the hearing despite receiving notice with instructions on the mandatory steps to take to participate in the hearing. Consequently, Hegg did not present any evidence to support its allegation that Schleis committed an act of misconduct under Iowa law.

On the other hand, Schleis did participate. She credibly testified that she was unaware of any Hegg policy prohibiting her from creating a new form document a resident's medication and that she had never been reprimanded for having done so multiple times in the past. Moreover, another RN signed off on the form. The evidence establishes Schleis did not think she was doing anything wrong when she created the new form documenting a resident's medication.

For these reasons, Hegg has failed to meet its burden to prove Schleis committed misconduct. The evidence establishes Hegg discharged Schleis for no disqualifying reason under Iowa law. Benefits are allowed, provided Schleis is otherwise eligible.

DECISION:

The August 20, 2020 (reference 02) unemployment insurance decision is reversed. Hegg discharged Schleis from employment for no disqualifying reason. Benefits are allowed, provided Schleis is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

A handwritten signature in black ink, appearing to read "Ben Humphrey", is written over a horizontal line. The signature is stylized and cursive.

Ben Humphrey
Administrative Law Judge

October 13, 2020
Decision Dated and Mailed

bh/sam