

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**KATHERINE S SCHLICHTING**  
Claimant

**GENESIS HEALTH SYSTEM**  
Employer

**APPEAL NO. 20A-UI-02266-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/09/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Federal Law PL 116-136 Sec. 2104 – Recovery of Overpayment of Federal Benefit

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated March 3, 2020, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on May 14, 2020. Claimant participated personally and had non attorney representative John Graupman. Employer participated by Kimberly Nimrick and Nicki Lear. Claimant's Exhibit A and Employer's Exhibits 1-8 were admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on February 5, 2020. Employer discharged claimant on February 5, 2020 because claimant was alleged to have been insubordinate to her superior and to have violated employer's Code of Conduct after repeated warnings about claimant's treatment of coworkers and superiors.

The most recent, final incident that led to claimant's discharge occurred on January 28, 2020 when claimant was alleged to have interrupted a meeting of nurses to complain about the actions of a coworker. Claimant was said to have been very excited, raised her voice, and was waving her hands when she approached the parties and spoke with her superiors. Her superior asked claimant to immediately meet with the other party so they could address the issue. Claimant did not wish to meet at that time as she was near the end of her shift, and claimant had other things to do after her shift ended.

Claimant stated that she tried to contact employer after that date to set up a meeting, but employer didn't respond. On February 5, 2020 employer approached claimant during her shift and asked that they immediately go to human resources. Claimant declined to do so, even

though she acknowledged the nurse was her superior and she was to do what was asked. Claimant stated she had other things to do.

When claimant returned that evening to her shift, she was taken aside and terminated for insubordinate actions and violating employer's Code of Conduct after repeated warnings.

Claimant did receive warnings about her behavior on April 17, 2017 and on April 4, 2019.

Claimant forwarded multiple documents of coworkers who were happy with claimant's work product.

Claimant has received federal unemployment benefits in this matter of \$3,600.00 and state unemployment benefits of \$3,068.00.

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

Iowa Code section 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 disqualification shall continue 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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

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 Ct. 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. *State v. Holtz*, 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. *State v. Holtz*, Id. In this matter, it is believed that claimant's last, most recent action on January 28, 2020 did include interrupting another meeting, a raised voice, and waving of arms. Claimant admitted she was frustrated at the time of the incident. It is also believed that claimant denied an immediate meeting of the parties. Therefore, that event that was so important that claimant needed to interrupt a meeting of nurses was not so important that claimant would take a couple minutes from her personal time to discuss the incident. Claimant also refused to discuss it days later when offered during her shift.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning insubordination and treating coworkers with respect. Claimant was warned on multiple occasions concerning this policy.

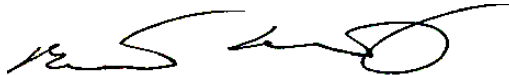
The last incident, which brought about the discharge, constitutes misconduct because claimant knew she had been warned multiple times concerning her attitude and behavior, but continued to act in a discourteous manner to coworkers and her superiors. She refused multiple meetings to address claimant's concerns. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

Claimant has received federal unemployment benefits in this matter of \$3,600.00 and state unemployment benefits of \$3,068.00. Said benefits received are overpayments.

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

**DECISION:**

The decision of the representative dated March 3, 2020, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. Claimant has received federal unemployment benefits in this matter of \$3,600.00 and state unemployment benefits of \$3,068.00. Said benefits received are overpayments.



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Blair A. Bennett  
Administrative Law Judge

May 15, 2020  
Decision Dated and Mailed

bab/scn