

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRITTANY J HACKER
Claimant

CATHOLIC HEALTH INITIATIVES - IOW
Employer

APPEAL 21A-UI-21183-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/22/21
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the September 20, 2021 (reference 01) unemployment insurance decision that denied benefits based upon claimant's discharge from employment. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records including the fact-finding documents. The parties were properly notified of the hearing. A telephone hearing was held on November 15, 2021. The claimant, Brittany Hacker, participated personally. The employer, Catholic Health Initiatives, did not participate. Claimant's Exhibit A was offered and received into the record.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
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: Claimant was employed full-time as a Registered Nurse from June 15, 2020, until her employment ended on August 24, 2021 when claimant was discharged for insubordination. Claimant's direct supervisor was Courtney Hiaring.

The employer discharged claimant for insubordination. The claimant testified that the employer had asked the claimant her opinion about what could be done with staff morale and the COVID-19 situation. The claimant testified that she informed the employer separating staff into two sections would be best. The claimant expressed that separating part of the staff into the tented Covid-19 area and the other part of the staff in the clean non-COVID-19 area would work best. The claimant further vocalized her concern about staff going in both the COVID-19 area and the non-COVID-19 area. The claimant believed that her supervisor had requested her opinion. Claimant believed that this matter was resolved after she expressed her opinion and did not know her job was in jeopardy.

Claimant had received discipline during the course of her employment regarding absenteeism, but not regarding insubordination or any other employment matters.

REASONING AND CONCLUSIONS OF LAW:

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

As a preliminary matter, the administrative law judge finds that the Claimant did not quit. Claimant was discharged from employment.

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 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.

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).

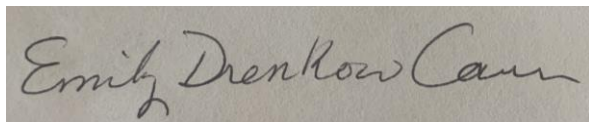
Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate 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).

In this case, the employer did not participate in the hearing and provided no details regarding the alleged insubordination. Claimant testified that the employer asked for her opinion about what could be done about staff morale and the COVID-19 situation. Claimant testified that she complied with employer's request and expressed her opinion. This is not misconduct.

The employer has failed to meet its burden of proof in establishing a current act of disqualifying job-related misconduct. As such, benefits are allowed. Because benefits are allowed, the issues of overpayment and chargeability are moot.

DECISION:

The September 20, 2021 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.



Emily Drenkow Carr
Administrative Law Judge

December 15, 2021

Decision Dated and Mailed

edc/abd