

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KRISTA MCCARTER
Claimant

**APPEAL 21A-UI-19043
CASE NO. 22IWDUI0045**

TRI-STATE NURSING ENTERPRISES, INC.
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/05/20
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

The appellant filed an appeal from the August 19, 2021 (reference 03) unemployment insurance decision that disallowed benefits to claimant. The parties were properly notified of the hearing. A telephone hearing was held on November 2, 2021. The claimant, Krista McCarter, appeared and provided testimony. The employer, Tri-State Nursing Enterprises, participated through witness Ashley LaBrune. The administrative law judge took official notice of the claimant's unemployment benefits records.

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: Employer is a nursing staffing firm. Claimant was employed full-time and worked for the employer for several years as a CNA. For the last approximately year and a half, claimant was placed at a single facility, Cedar Falls. Claimant began working for employer sometime in 2018 and her last day was on June 22, 2021.

Employer has a written policy that states one no call no show will be considered grounds for immediate discharge. Claimant received a copy of this written policy when she became employed by the employer. She also received information regarding this policy at her orientation.

Claimant did not show up for work on June 22, 2021. On June 21, 2021, Claimant notified the facility where she worked, Cedar Falls, that she would not be at work on June 22, 2021. However, Claimant failed to report her absence to the employer. Claimant was aware that she needed to inform the employer about the absence, but thought that the facility would let the employer know about her absence. On June 22, 2021, when claimant did not show up to work,

claimant was discharged for failing to attend work. On that same day, June 22, 2021, claimant sent an inflammatory email to her employer.

REASONING AND CONCLUSIONS OF LAW:

As a preliminary matter, I find 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).

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). 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). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct

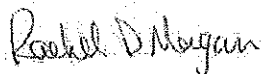
unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Further, poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). A lapse of 11 days from final act until discharge when claimant was notified on fourth day that his conduct was grounds for dismissal did not make final act a "past act". *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

This case involves an incident of carelessness or negligence, not misconduct. Claimant acknowledged that she understood that she was supposed to inform both the employer and the facility where she was placed about any absences. However, on June 21, 2021, Claimant was under stress due to personal issues and only informed the facility of her absence and not the employer. This single act does not constitute misconduct particularly when claimant had not been disciplined or warned about any other alleged misconduct, including absenteeism, prior to her discharge on June 22, 2021.

The employer has a right to expect that an employee will properly inform the employer of any absences and may have made the correct decision in separating from the claimant. However, claimant's conduct does not amount to disqualifying misconduct. This analysis does not change when considering the inflammatory email that claimant sent on June 22, 2021. Although employer indicated that the email was also a factor in claimant's discharge, no such communication was made to the claimant. The only reason communicated to the claimant for her discharge was her failure to notify the employer of her absence. Accordingly, the employer has not met its burden of proof in establishing that the claimant's conduct consisted of deliberate acts that constituted an intentional and substantial disregard of the employer's interests. As such, benefits are allowed.

DECISION:

The August 19, 2021 (reference 03) unemployment insurance decision denying benefits is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Rachel D Morgan
Administrative Law Judge

11/03/2021

Decision Dated and Mailed

RM/aa

Case Title: MCCARTER V. TRI-STATE NURSING ENTERPRISES INC
Case Number: 22IWDUI0045
Type: Proposed Decision

IT IS SO ORDERED.

Rachel D Morgan

Rachel Morgan, Administrative Law Judge