

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ASHLEY ALLENSTEIN
Claimant

SELECT MEDICAL CORPORATION
Employer

APPEAL 18A-UI-09821-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/19/18
Claimant: APPELLANT (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 17, 2018, (reference 01) that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 11, 2018. Claimant participated along with her witness Amy Noble. Employer participated through Melanie Mason, Director of Sports Medicine. Employer's Exhibit A was admitted into the record.

ISSUE:

Was the claimant discharged due to job connected misconduct sufficient to disqualify her from receipt of unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an athletic trainer beginning on August 7, 2018 through August 17, 2018 when she was discharged. The claimant was assigned to work at Marion High School as the trainer for the soccer team and the football team. She had two high school students who worked as the varsity football team manager. On August 16, the football team was practicing during the extreme heat and after a strenuous workout. The claimant told one of the student football managers to let her do her job. At no time did the claimant use profanity when speaking to the student. Amy Noble was present during the conversation and overheard both parties discussion. Ms. Noble did not hear the claimant use any profanity during the conversation with any of the students.

The next day the assistant principal and the school athletic trainer notified Ms. Mason that they no longer wanted the claimant working at their school because she had allegedly used profanity when speaking to a student. Ms. Noble, who was a first-hand witness to the events, was not interviewed by anyone at the high school or by the employer.

The employer discharged the claimant because she had been previously warned about using profanity when speaking to students in May 2018.

REASONING AND CONCLUSIONS OF LAW:

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

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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The employer has not established that the claimant engaged in any job connected misconduct. The first-hand witness to the account, Ms. Noble, credibly testified that the claimant did not use profanity when speaking to the student on August 16, 2018. While the school district may have asked that she no longer work at the school, that alone does not establish job connected misconduct. The fact that the employer did not have another location for the claimant to work at does not mean her separation was due to job connected misconduct. The administrative law judge is persuaded that the claimant did not use profanity when speaking to the student on August 16. No job connected misconduct has been established by the employer. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The September 17, 2018, (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/scn