

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CORA BOWAY
Claimant

APPEAL 15A-UI-12482-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPIRIT HOMECARE LLC
Employer

**OC: 09/27/15
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 5, 2015 (reference 01) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A telephone hearing was held on December 1, 2015. Claimant participated personally and through witnesses John Barnic and Monica Yahwenneh. Employer participated through director of operations for satellite offices and patient care Melissa Petersen and director of operations for the main office Natalie Ehrp.

ISSUE:

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 life care specialist from October 14, 2014 and was separated from employment on September 29, 2015; when she was terminated.

As part of her job duties, claimant worked with a patient who also had hospice care. Employer provided this patient with care 24 hours a day, seven days per week. Hospice provided additional care several days throughout the week. On September 29, 2015, claimant arrived at work at 6:30 a.m. to provide the patient care. When the hospice employee arrived to care for the patient at 8:00 a.m., she observed the patient lying in feces and urine. The hospice employee asked claimant to bring her rags to clean the patient. Claimant went to the washing machine and took dirty rags from the machine and brought them to the hospice employee. Hospice reported claimant's conduct to employer the same day. After receiving the report, director of operations for the main office Natalie Ehrp called claimant and asked her what occurred. Claimant stated the person working the night shift did not do the laundry so there were no clean rags available. Claimant stated it was not her responsibility to do the laundry. Only a few days earlier, Ehrp had informed claimant she needed to do the laundry for the patient when she arrived at work, even if the person working the night shift should have done so.

On February 4, 2015, claimant was given a written warning because a patient complained that she did not respond when he called for help

On February 9, 2015, claimant was given a written warning for missing a patient's night medication pass.

Employer terminated claimant's employment on September 29, 2015, due to the report it received that day.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *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). 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).

Here, claimant provided unhygienic and unsanitary care to a patient in deliberate disregard of the patient, employer, and society's interest. Workers in the medical or dependent care profession, reasonably have a higher standard of care required in the performance of their job duties to ensure public safety and health. Claimant's actions violated the standards of behavior that any employer has a right to expect from its employees. This is misconduct without prior warning or specific policy violation.

Although claimant denies engaging in the conduct in question, I do not find her testimony or the testimony provided by her witnesses credible. Claimant asserts that in August, Ehrp notified employer's employees the company was going to be sold and they would be laid off. Claimant alleges she was laid off on September 29, 2015 and not terminated for misconduct. However, claimant's witness, John Barnic, gave a different story. According to Barnic, employer did not tell its employees there would be lay-offs until October 2015. By this time, claimant had already been terminated. Monica Yahwenneh's testimony is not credible as she has not worked for employer since February 2015.

DECISION:

The November 5, 2015 (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Christine A. Louis
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Decision Dated and Mailed

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