

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

KARLA A BUNTROCK
Claimant

APPEAL NO: 19A-UI-07012-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FOREST CITY VETERINARY CLINIC LLC
Employer

OC: 12/30/18
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 22, 2019, reference 03, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 26, 2019. The claimant participated in the hearing. Dr. Gene Fjeld, Owner/Veterinarian, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time veterinary technician for Forest City Veterinary Clinic from April 22, 2019 to July 21, 2019. She was discharged because Dr. Gene Fjeld told her she was not “fitting in” with the clinic.

The claimant completed veterinary technician school in 2014 and had not worked in that capacity since that time. She made the employer aware of that fact at the time of hire.

The employer felt the claimant was not proficient in blood draws, giving injections or running lab work. The claimant expected she would receive training on those tasks but the employer did not have time to teach or train the claimant. He was told by other employees that when they were busy or needed help the claimant spent time talking to clients or would go to the back room rather than help out. The claimant denies those allegations and stated she was eager to help and learn. The employer felt the claimant was not a good “people person” on the phone because he thought she was rude on occasion and gave her opinion of what the caller should do rather than asking one of the veterinarians. The employer never talked to the claimant about the issues it had with her performance even though the claimant frequently asked for feedback. The employer testified there was “too much friction” between the claimant and other employees. The claimant testified she was not aware of any friction. Both parties agreed the claimant lacked the ability to perform the job to the employer’s expectations. The claimant and employer

signed a 90-day contract and at the conclusion of that contract, the employer terminated the claimant's employment.

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.

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 proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. 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 Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The employer was dissatisfied with the claimant's job performance and both parties believed the claimant lacked the ability to perform the job to the employer's expectations. However, failing to perform to the employer's expectations due to inability or to fit in is not misconduct under Iowa law. The employer never talked to the claimant about her performance and never warned her that her job was in jeopardy.

Under these circumstances, the administrative law judge must conclude the employer has not met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The August 22, 2019, reference 03, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn