

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VICKIE J ZIMMER
Claimant

APPEAL 21A-UI-21958-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

QHC FORT DODGE VILLA LLC
Employer

OC: 10/25/20
Claimant: Appellant (2)

Iowa Code § 96.5(1) - Voluntary Quit
Iowa Code § 96.5(2)a - Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a - Discharge for Misconduct
Iowa Admin. Code r. 871-24.1(113)c - Discharge for Violation of Rules

STATEMENT OF THE CASE:

Claimant, Vickie Zimmer, filed an appeal from the September 30, 2021, (reference 02) unemployment insurance decision that denied benefits based upon finding a September 2, 2021 discharge for misconduct, violation of known company rules. The parties were properly notified of the hearing. A telephone hearing was held on November 23, 2021. The claimant participated. The employer, QHC Fort Dodge Village LLC, participated through Jessica Bellinger. No exhibits were offered. Judicial notice was taken of the administrative file.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?

FINDINGS OF FACT:

Having heard the testimony and reviewed evidence in the record, the administrative law judge finds that claimant was employed full-time with a set schedule and being on call as an MDS Coordinator. Her first day of work was March 2, 2021. Her last day worked was September 2, 2021, when the employer discharged her for misconduct on the same date for violation of employer group 1 and group 2 offenses involving refusing to cooperate with co-workers, conduct not in the best interest of employer, and failure to meet cares standard for an incident that took place during claimant's shift covering September 1 in September 2, 2021.

Employer has an employee handbook, which covers policies. Claimant was provided a copy of the handbook. Claimant was not aware her job was in jeopardy prior to being told she was terminated. Claimant was not previously warned of this type of misconduct, nor disciplined for any misconduct. Employer testified that even though no prior discipline, since claimant was a nurse, she should know her job was in jeopardy. Employer's sole witness had firsthand knowledge of the meeting where claimant was discharged but did not witness any of the alleged misconduct. No witnesses were called regarding the alleged misconduct. No exhibits were

offered regarding claimant's handbook, policies at play, witness statements, investigation or findings of the investigation. It is alleged a patient was admitted prior to the start of claimant's shift and during her shift, medications arrived to be processed and claimant refused to process the medication, resulting in patient not timely getting their medications resulting in negative consequences for patient. Claimant asserts she was never advised about any new admission/re-admissions for her area and no medications were brought to her for processing and as the junior titled employee, employer was attempting to make her the scapegoat.

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:

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.

871 IAC 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 Department of Job Service*, 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 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).

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, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee’s act is misconduct does not rest solely on the interpretation or application of the employer’s policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning.

Employer failed to meet their burden of proof. There was no testimony offered from any firsthand witness to the alleged acts of misconduct. No documentation offered of that work rules allegedly violated or the reports/statements of witnesses to the alleged violation. Claimant shared how there was another patient on her floor she was unaware was there, and when the medic brought medications for the patient, the medic administered the medications without claimant “processing” them, but no one told her of the patient, not told her about medication, nor any medication arrive. Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Employer provided no firsthand testimony of the alleged violations. While employer may have had a good reason to discharge claimant, it was not a disqualifying reason. Accordingly, no disqualification pursuant to Iowa Code § 96.5(2)a is imposed.

DECISION:

The September 30, 2021, (reference 02) unemployment insurance decision 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.



Darrin T. Hamilton
Administrative Law Judge

January 7, 2022
Decision Dated and Mailed

dh/scn