

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CHAD M BEHOUNEK**  
Claimant

**KOSSUTH COUNTY HOSPITAL**  
Employer

**APPEAL 19A-UI-02115-CL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/03/19**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the March 1, 2019, (reference 01) unemployment insurance decision that denied benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on March 27, 2019. Claimant participated. Employer participated through director of human resources Paula Seely and radiology manager Stephanie Riggert. Employer's Exhibits 1 through 5 were received.

**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 began working for employer on August 9, 2004. Claimant last worked as a full-time radiology technician. Claimant was separated from employment on January 28, 2019, when he was terminated.

Employer has a policy stating that radiology services are available 24 hours a day, seven days per week and that a "call schedule" is maintained current and is posted in several places. The policy states that "on-call" staff have a 30-minute response time. Claimant was aware of the policy.

On September 24, 2017, claimant was the on-call employee and was paged to work in the emergency room. When claimant arrived, he was under the influence of alcohol. Employer suspended claimant and gave him a warning. Employer also informed employee he could only continue his employment if he successfully completed an evaluation and treatment for alcohol dependence. Claimant did so and was allowed to maintain his employment.

On January 3, 2018, claimant was given a warning regarding attendance. The warning addressed the fact that claimant had his wife call in to report his absence, which was not in accordance with the process set forth by employer.

On February 3, 2018, claimant was given a final warning for failing to respond within 30 minutes when paged on call time.

On September 24, 2018, claimant was put on a performance improvement plan. The plan required claimant to respond to a physician's page within 30 minutes when he was on call.

On January 27, 2019, claimant was on call until 9:00 p.m. A physician paged claimant at 8:00 p.m. Instead of responding to the page, claimant had his wife call the next radiology technician on duty. The next radiology technician responded on claimant's behalf.

On January 28, 2019, claimant called radiology manager Stephanie Riggert and asked her if he still had a job. Riggert informed claimant he was going to be terminated and asked him why he did not respond to the page the night before. Claimant stated it was because of poor weather. Riggert asked claimant to come in the next morning at 10:00 a.m. for a meeting.

The next morning, claimant's wife called employer and stated claimant could not make it to the meeting because he was under the influence of alcohol.

### **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, 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 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).

In this case, claimant violated the on-call policy requirements after having been warned. Although claimant asserts the reason he did not report to work within 30 minutes of the page was because of a stomach-related illness, I do not find that testimony credible. Claimant was not able to give a good explanation for why he had his wife call the next radiology technician on duty, as opposed to doing it himself. Claimant also failed to give a satisfactory explanation for why he told his supervisor the next day that he did not respond due to poor weather. I conclude that claimant did not respond to the page for personal reasons and in violation of employer's policy, of which claimant was well aware. Employer established claimant was terminated for misconduct.

**DECISION:**

The March 1, 2019, (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 he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Christine A. Louis  
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Decision Dated and Mailed

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