

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CATHERINE L WITT
Claimant

CENTRAL IOWA HOSPITAL CORP
Employer

APPEAL 18A-UI-05892-H2T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/06/18
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the May 21, 2018, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 14, 2018. Claimant did not participate. Employer participated through Kendra Steuhm, Human Resources Business Partner. Employer's Exhibit 1 was admitted into the record.

ISSUE:

Was the claimant discharged due to job-connected misconduct sufficient to disqualify her from 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 a registered nurse beginning on April 17, 2017 through May 7, 2018, when she was discharged.

The claimant was discharged because her usage or administration of morphine and fentanyl to patients she treated was higher than other nurses. The employer's records show that the claimant was working in the emergency room often in the rooms where patients in pain were treated. The claimant denied any improper use or administration of pain medications. The employer's witnesses could not explain how the claimant's actions were a violation of the employer's specific rules or policies. The mere fact that claimant's usage was higher, although troubling, does not in and of itself mean the claimant was engaging in misconduct.

The employer's documents also point out that when claimant was going through the process of "wasting" medications not used for patients she did so in front of her significant other who was also a nurse in the unit. Nowhere in the employer's documents does it indicate that 'wasting' in front of a significant other is a violation of the employer's policies and procedures. Claimant denied to the employer that she engaged in any mishandling of narcotics or medications.

While the employer's exhibit makes mention of other issues, such as a colleague seeing the claimant with a syringe, there is no explanation as to how that is a violation of the employer's policies. Nor is the date of the incident described. No witnesses with firsthand knowledge of the events testified at the hearing.

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 simply has not met their burden of proof to establish job-connected misconduct by the claimant. While the disciplinary notice contains allegations of wrong doing, they were all denied by the claimant when the employer interviewed her. The employer did not present any first hand witnesses at the hearing who could testify to the actual conduct of the claimant and how her conduct violated their policies. The evidence presented does not meet the employer’s burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. 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. Benefits are allowed.

DECISION:

The May 21, 2018, (reference 01) decision is affirmed. 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/rvs