

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DORRINE L GARDIPEE
Claimant

TRINITY REGIONAL MEDICAL CENTER
Employer

APPEAL 21A-UI-19894-JD-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 07/04/21
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On September 7, 2021, the claimant filed an appeal from the August 26, 2021, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 29, 2021. Claimant Dorrine Gardipee participated and testified. Employer participated through Ashley Makuch, Human Resources Manager and Holly Espenhover, Human Resources Director. Claimant's Exhibit A was offered and admitted. Employer's exhibit 1 was offered and admitted. Official notice was take of the administrative record.

ISSUE:

Was the claimant discharged from employment 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 in 2011 as a full-time in-home physical therapy assistant. Claimant would travel to patients' homes and assist them with their prescribed physical therapy protocols. She would spend thirty to sixty minutes in each home and then travel to her next appointment. The claimant was discharged from employment on June 1, 2021, after she refused to wear Personal Protective Equipment (PPE)-mask for every in-home appointment. The employer instituted a universal mask mandate for its employees at the beginning of the global Coronavirus pandemic per Center for Disease Control (CDC) and Operational Safety and Health Administration (OSHA) mandates. Those mandates remain in effect and are not optional. On May 29, 2021, the claimant's supervisor, Susan Quade, was informed by some of the claimant's patients that she was not wearing a mask during her in-home appointments. Ms. Quade notified her supervisor, Amanda Lyon, and they immediately suspended the claimant from any in-home visits until they could discuss the issue with the claimant. (Emp. Ex. 1). The claimant was provided with another copy of the employer's masking requirements and was directed to wear a mask during every home visit. (*Id.*). The claimant disagreed with this policy but indicated that she would wear mask if the patient requested. (*Id.*). The employer held a telephone conference with the claimant on June 30, 2021, regarding this issue and following that meeting discharged the claimant due to her unwillingness to comply with the masking

requirement. (*Id.*). The claimant was aware that her non-compliance would likely lead to termination.

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) (2019) provides:

Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

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.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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.

The Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665, (Iowa 2000) (*quoting Reigelsberger v. Employment Appeal Board*, 500 N.W.2d 64, 66 (Iowa 1993)).

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 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 NW2d 661 (Iowa 2000).

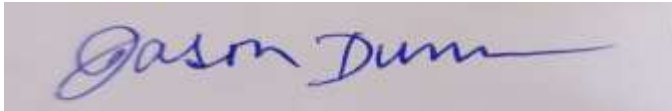
Continued failure to follow reasonable instructions constitutes misconduct. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). The Board

must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985). Good faith under this standard is not determined by the Petitioner's subjective understanding. Good faith is measured by an objective standard of reasonableness. "The key question is what a reasonable person would have believed under the circumstances." *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330, 337 (Iowa 1988) accord *O'Brien v. EAB*, 494 N.W.2d 660 (Iowa 1993) (objective good faith is test in quits for good cause).

The claimant's refusal to voluntarily wear a mask during each of her in-home visits is not reasonable and equates to willful misconduct that is not in the employer's best interest. The employer was required to mandate that their employees wear masks. This requirement was not optional and it was rooted in credible medical evidence that wearing face masks reduced the spread of Covid-19. The claimant's job required her to enter patients' homes and engage in close personal contact with them as part of her job duties. The fact that the claimant had no issue wearing a mask when the State mandated their use is telling and supports the finding that her decision to discontinue wearing masks were for reasons that were not founded in good faith or good cause. Her refusal to wear a mask during in-home visits is not reasonable and places her patients at risk and defies the regulations placed upon her employer by OSHA and the CDC. The claimant's decision not to comply with the employer's mask mandate is disqualifying misconduct and benefits are denied

DECISION:

The August 26, 2021, (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.



Jason Dunn
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November 17, 2021
Decision Dated and Mailed

jd/ol