

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

Claimant

APPEAL NO: 17A-UI-07492-JE-T

Employer

**ADMINISTRATIVE LAW JUDGE
PUBLIC DECISION**

**OC: 06/25/17
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 19, 2017, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 10, 2017. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The employer participated in the hearing. Employer's Exhibits One through Nine were admitted into evidence.

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 staff nurse for the employer from August 19, 2013 to June 29, 2017. She was discharged for using unnecessary force with a patient.

On June 23, 2017, a technician was attempting to leave the locked area when a patient with developmental disabilities stood between him and the door and pretended like she was going to exit the mental health unit. The tech and the patient were laughing and the claimant came out of the office and said, "Knock it off. Do we need to call security?" The claimant then grabbed the patient and pushed her into the corner. The patient is approximately 5'1" and 106 pounds. The claimant is approximately 5'9" or 5'10". The claimant stepped away from the patient and stood in front of her and the patient slapped at the claimant but did not make contact. The claimant grabbed the patient's arms and pushed her into the corner again. When the claimant was holding the patient's arms, the patient kicked at her but did not strike her. The claimant used her right leg and swept the patient's legs out from under her and the patient fell to the floor. The claimant stood over her for approximately four seconds and then the patient stood up and faced her. The patient swatted the claimant with her left hand and stepped away from the claimant. The claimant stepped toward the patient and grabbed her in a bear hug and carried her down the hall to her room (Employer's Exhibit Three). Once they reached the patient's room the claimant put the patient in a chair and started to leave the room and the patient

followed her. The claimant pointed her finger in the patient's face and the patient raised her arms but took a couple of steps back. She did not make contact with the claimant. The claimant grabbed the patient by her shoulders and pinned her against the wall by her upper arms for 15 seconds. The claimant released the patient and stepped back while pushing the patient away from her. The patient stepped toward the claimant again and the claimant used two hands and pushed the patient who struck the wall, fell down and hit her head while the claimant continued to stand over her in an "aggressive" manner (Employer's Exhibits Four, Five and Six). Another staff member contacted security and it arrived six minutes after the confrontation between the claimant and the patient began.

Another staff member was in the same hallway throughout the entirety of this incident. The other staff member did not intervene because he did not feel the claimant was being threatened or attacked. Employees wear panic button pendants and can call a code green for assistance. The claimant did not engage her panic button or a code green during this incident. The employer routinely tests the pendants and call buttons and they were working at the time of this situation.

The employer investigated the June 23, 2017, incident by interviewing staff and watching the video. At the conclusion of its investigation the employer terminated the claimant's employment June 29, 2017, for using unnecessary force with the patient (Employer's Exhibit One).

The claimant received a written warning April 12, 2017 after a patient in the emergency room asked the claimant her name and the claimant replied, "Helen Keller" (Employer's Exhibit Two).

The claimant has not claimed or received unemployment insurance benefits since her separation from this employer.

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 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). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant had multiple opportunities to walk away from the patient but instead engaged her several times. She pushed the patient more than once, grabbed her in a bear hug and carried her down the hall, swept her legs out from under her, wagged her finger in the patient's face, and pushed her down with two hands which caused the patient to hit her head. All of these actions could have been avoided had the claimant simply walked away.

The employer's policies address "Management of Violent Persons" and "Service Excellence." The claimant had also been trained on how to interact with patients and how to handle patients' behaviors. The claimant did not feel so threatened as to use her panic button or call for a code green and the employee who observed this incident did not feel the need to intervene as the claimant was not being threatened or attacked.

The claimant was considerably bigger than the patient and was the aggressor during this incident. Not only did she fail to walk away despite several opportunities to do so, she used excessive and unnecessary force with the patient as well. The patient may have swatted at the claimant but only struck her ineffectively with her left hand one time. The claimant initiated physical contact with the patient numerous times throughout this encounter without good cause.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The July 19, 2017, reference 01, decision is reversed. 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, provided she is otherwise eligible. The claimant has not claimed or received unemployment insurance benefits since her separation from this employer.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn