

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TANYA N PRITTS
Claimant

SIOUX VALLEY MEMORIAL HOSPITAL
Employer

APPEAL 15A-UI-10960-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/16/15
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the September 21, 2015, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 15, 2015. Claimant participated. Employer participated through chief executive officer, David Liebsack, radiology manager, Melissa Barnes, and vice president of regulatory and compliance/privacy officer, Connie Mohn. Employer's Exhibit 1 was received. Claimant's Exhibits A through F 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 was employed full-time as a radiology technologist from June 1, 2007, and was separated from employment on August 18, 2015, when she was terminated.

On July 28, 2015, a trauma patient was brought into employer's emergency room. Employer requires radiology technologists to inform the radiologist when a trauma patient comes in. Claimant and technologists Carrie and Diane were also working. However, none of the technologists informed the radiologist of the trauma patient's arrival. Claimant and Carrie took x-rays of the patient. Carrie was operating the control panel. Carrie told claimant that she accidentally combined the images of the scapula with the images of the shoulder and needed to split the images back into two sets. Carrie was the only person on duty who had user access to perform this function. Claimant understood Carrie would split the images and send them to the radiologist. Claimant was not asked to do a three dimensional reconstruction of the images before sending them.

Claimant and Carrie then did a CT scan on the patient. Claimant took images of the chest and cervical spine. Claimant did not split the images before sending them. The images did not send. Earlier that day, the radiology department had been having computer issues and was in conversation regarding those issues with the IT department. Claimant's scheduled shift was

ending. Employees are discouraged from working overtime. If claimant stayed late at work, she would need to make alternate arrangements for the care of her children. Carrie told claimant she would finish up the paperwork and that it was okay for claimant to go home. Carrie's shift was scheduled to end later than claimant's. Carrie later split the images from the CT scan and successfully sent the images to the correct recipients.

During her last year of employment, employer talked to claimant on 22 occasions about communication and attention to detail. One on occasion Liebsack spoke with claimant about splitting files before sending them. However, Liebsack never warned claimant she could be terminated for her failure to do so.

On June 8, 2015, claimant was given a written warning for cell phone usage.

On June 12, 2015, claimant was given a written warning for correcting a patient's birthdate on his medical records and accessing her father's medical records.

On June 29, 2015, employer gave claimant a written warning for failure to capture the necessary anatomy on an x-ray.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason.

Iowa Code § 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.

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).

Employer failed to establish it terminated claimant for misconduct. Employer did not establish claimant was any more responsible for notifying the radiologist of the trauma patient than any other radiology technician working that shift. Employer did not establish claimant was responsible for sending the images from the x-ray room. It is reasonable to believe Carrie should have sent the images if she was the only person who had access to split the images, and she acknowledged it needed to be done. Employer did not establish claimant was instructed to create three dimensional reconstructed images. Claimant denies this occurred, and employer only provided testimony from second hand witnesses on this matter. The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). Claimant did not complete the follow-up paperwork from the day because Carrie agreed to do so. Employer did not present any information indicating this was against policy. Finally, claimant should have split the images from CT scan before sending them. However, employer had never previously warned claimant that her failure to do so would result in her termination.

The warnings claimant received prior to July 28, 2015, do not pertain to the same type of conduct. Even if employer verbally counseled claimant 22 times during the last year of her employment regarding attention to detail and communication, the most it can show is that she was a poor performer. Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification,

rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552 (Iowa Ct. App. 1986).

Employer may have had good business reasons to terminate claimant. However, employer did not establish claimant deliberately engaged in any conduct that would cause her to be disqualified from receiving unemployment benefits.

DECISION:

The September 21, 2015, (reference 02) unemployment insurance decision is affirmed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/pjs