

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAWN R BROOKS

Claimant

MERCY MEDICAL CENTER

Employer

APPEAL 18A-UI-12313-DB

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/25/18

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the December 14, 2018 (reference 01) unemployment insurance decision that found the claimant was not eligible for unemployment insurance benefits based upon her discharge from employment. The parties were properly notified of the hearing. An in-person hearing was held in Cedar Rapids, Iowa on January 9, 2019. The claimant, Dawn R. Brooks, participated personally. The employer, Mercy Medical Center, participated through witness Tawnya Salsbery. Nici Davis and Amanda Felton were present on behalf of the employer.

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 from June 20, 2016 until October 27, 2018, when she was discharged from employment. Claimant's job title was staff registered nurse and her general job duties included caring for patients at the employer's long-term care facility. Nici Davis was claimant's immediate supervisor at the time claimant was discharged.

This employer has a written policy which provides that the Schedule II medications (including narcotics) must be double locked whenever they are not in your sight. The Schedule II medications are kept in a separate drawer inside the medication cart. The claimant was aware of this policy and had access to the written policy on the employer's computer system.

The final incident leading to discharge occurred on October 21, 2018. Claimant was responsible for distributing medications and securing the medications in the medication cart on that date. During her shift claimant used paper and scotch tape to manipulate the single key lock on the narcotics drawer so that it would not lock. This paper and tape was left on the drawer after her shift because she forgot to remove it. The purpose of claimant taping the lock was because she was having trouble using the key in the lock. This came to the attention of the

employer when another employee found the lock on the narcotics drawer had been manipulated so that it would not lock after the claimant had left her shift and was no longer securing the medication drawer.

Claimant had received previous discipline regarding disregard of safety and security regulations on December 23, 2017. This final written warning involved her inaccurate documentation of distribution of medication. Further, on January 19, 2017, she received a written warning for disregard of safety and security regulations regarding her failure to distribute medications to residents and distributing the wrong medication to a resident. Claimant was made aware that her job was in jeopardy when she received the final written warning on December 23, 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for job-related misconduct. Benefits are denied.

As a preliminary matter, I find that the Claimant did not quit. Claimant was discharged from employment.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* 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). Further, 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). 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 Bd.*, 616 N.W.2d 661 (Iowa 2000). A lapse of 11 days from final act until discharge when claimant was notified on fourth day that his conduct was grounds for dismissal did not make final act a "past act". *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

This was not an incident of carelessness or poor work performance. Claimant intentionally used paper and tape on the narcotics drawer to manipulate it so that it would not lock. She did this knowing that her job duties required her to keep the narcotics drawer double locked when it was not in her sight. She left the narcotics drawer unlocked and unsecured when she left her shift. It is clear that claimant's actions were intentional and they were a substantial violation of the employer's policies and procedures. The employer has a right to expect that an employee will not jeopardize the liability of the employer by intentionally violating safety policies that are in place. There is substantial evidence in the record to support the conclusion that claimant deliberately violated these rightful expectations in this case. Accordingly, the employer has met its burden of proof in establishing that the claimant's conduct consisted of deliberate acts that constituted an intentional and substantial disregard of the employer's interests. These actions rise to the level of willful misconduct. As such, benefits are denied.

DECISION:

The December 14, 2018 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for job-related misconduct. Unemployment insurance benefits are denied until claimant has worked in and earned wages for insured work equal to ten times her weekly benefit amount after her separation date, and provided she is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs