

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CRISTINE R BAKER
Claimant

IOWA PHYSICIANS CLINIC MEDICAL
Employer

APPEAL 16A-UI-06559-JCT
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 05/08/16
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 8, 2016 (reference 02) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on June 27, 2016. The claimant participated personally and through Ryan T. Beattie, Attorney at Law. The employer did not register for the hearing and did not participate. Based on the evidence, the argument presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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: The claimant was employed full time as a medical lab technician and was separated from employment on May 6, 2016, when she was discharged. At the time of the claimant's discharge, she was informed that she was not a good fit for the facility and it was time to part ways. The employer did not offer the claimant any further details about reasons for her discharge.

However, on the claimant's final day of employment, she sent an email out to staff, for which she believed she was authorized to do so. In the email, she reminded nurses to submit a paper requisition when submitting a pap smear sample for testing. The claimant sent the reminder in response to a nurse questioning the claimant about the process that day. The claimant did not think she lacked the authority to send the email, which she wrote in all capital letters, and included red font and underlining. A doctor who received the email as well, responded back to the claimant, directing her to refrain from "screaming" at staff via email. The claimant apologized to the doctor.

Prior to discharge, the claimant had two unrelated warnings, including one in April 2016 regarding a discarded blood sample that resulted in tests possibly not being performed. The claimant was questioned about the sample approximately two weeks after the incident occurred, was not furnished details about it, and was unable to provide an explanation. As a result, she received a written warning. In addition, about a week prior to discharge, the claimant was counseled about a urine sample that had intended to be marked as "stat", meaning she was to perform tests on it immediately, but that she missed it due to lack of documentation accompanying the sample, and because she was performing other work. The claimant was not issued a final written warning or suspension during her employment and was unaware her job was in jeopardy.

The employer did not attend the hearing, or furnish a written statement or documentation in lieu of participation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment 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.

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, it incurs potential liability for unemployment insurance benefits related to that separation. Misconduct for this purpose is defined as

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a). Misconduct "must be substantial" to justify the denial of unemployment benefits. *Lee*, 616 N.W.2d at 665 (citation omitted). "Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." *Id.* (citation omitted).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the witness and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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

(4) Report required. The claimant's statement and the 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.

At the time of the claimant's discharge, she was informed she was no longer a good fit for the company. In this case, the employer did not attend the hearing, and did not furnish any evidence with regard to the reason for the claimant's discharge, or refute her testimony. The credible evidence presented is that the claimant had two prior warnings related to testing of a urine and blood sample. The evidence presented does not establish that the claimant had ever been warned for her conduct with regard to interactions with other employees, emails or unprofessionalism, or that she could have reasonably anticipated her job was in jeopardy prior to sending the email reminder about paper requisitions on May 6, 2016.

The administrative law judge is persuaded that the email sent in all capital letters with underlined words and red letters could be interpreted as unprofessional in a setting under which the claimant worked. However, if the employer did in fact fire the claimant for the email, the administrative law judge concludes the conduct for which the claimant was discharged was merely an isolated incident of poor judgment and inasmuch as the employer had not previously warned the claimant about the issue leading to the separation, it has not met the burden of proof to establish that the 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. No evidence was furnished by the employer that the email was so egregious that it warranted immediate discharge instead of a lesser penalty. A warning for blood or urine specimen testing is not

similar to email communications or professionalism, and the employer's simple accrual of a certain number of warnings counting towards discharge does not establish repeated negligence or deliberation and is not dispositive of the issue of misconduct for the purpose of determining eligibility for unemployment insurance benefits. While the employer may have had business reasons to discharge the claimant, it has not established that the claimant was discharged for misconduct for purposes of unemployment insurance benefits under Iowa law. Benefits are allowed.

DECISION:

The June 8, 2016 (reference 02) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/can