

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BRAD J WESSELS**  
Claimant

**MERCY HEALTH SERVICES-IOWA CORP**  
Employer

**APPEAL 18A-UI-04752-JP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/18/18**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the April 16, 2018, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 10, 2018. Claimant participated. Employer participated through human resources manager Paula Kruthoff. Official notice was taken of the administrative record with no objection.

**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 is employed part-time as a registered nurse since July 7, 2014. Claimant last performed work for the employer on February 22, 2018. On February 28, 2018, the employer sent an e-mail to claimant notifying him he was suspended effective March 1, 2018 until further notice because his nursing license expiration date was February 28, 2018.

Claimant has a Wisconsin nursing license and he works in Iowa under a compact state licensure. The compact state licensure is an agreement where Iowa recognizes claimant's Wisconsin Nursing license. When claimant was hired, he was aware he had to have an active nursing license with an expiration date in the future. The employer requires its nurses to have an active license and an expiration date in the future. Ms. Kruthoff testified that the employer is legally required to have its nurses have an active license and an expiration date in the future. A joint commission reviews the employer, including its nurses' licenses, and provides the employer with its accreditation. Part of the accreditation requires the nurses' licenses to have expiration dates in the future. If the employer allows a nurse to work with an expired nursing license, it may lose its accreditation.

At the beginning of every month the employer reviews its nurses' licenses to determine if any are going to expire soon. Around February 3, 2018, the employer e-mailed claimant that his nursing license was going to expire on February 28, 2018. Claimant informed the employer that

he was working on the issue. In the middle of February 2018, claimant applied for a nursing license renewal. Claimant did not provide the employer with a copy of his nursing license renewal application. There was an issue with claimant's application for renewal. Claimant's application was flagged that he had a legal issue in the past two years, which caused an investigation into his background. On February 28, 2018, claimant's nursing license still showed an expiration date of February 28, 2018. On February 28, 2018, the employer sent an e-mail to claimant notifying him he was suspended effective March 1, 2018 until further notice because his nursing license expiration date was February 28, 2018. Since March 1, 2018, the employer has monitored the status of claimant's nursing license, but it still shows an expiration date of February 28, 2018. The online website indicates claimant's nursing license is active, his credentialed license is current, and his credentialed license is current through February 28, 2018. Claimant requested the Wisconsin Department of Safety and Professional Services provide something in writing that he is still eligible to practice during its investigation. The Department of Safety and Professional Services informed claimant that they cannot provide him any legal documentation. The employer is holding claimant's position open for him.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was suspended from employment for reasons related to job misconduct. Benefits are denied.

It is the duty of an administrative law judge and 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, as the finder of fact, 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. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). 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 evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

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).

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(9) provides:

**(9) Suspension or disciplinary layoff.** Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification. This rule is intended to implement Iowa Code section 96.5 and Supreme Court of Iowa decision, *Sheryl A. Cospers vs. Iowa Department of Job Service and Blue Cross of Iowa*.

The employer has the burden of proving disqualifying job misconduct. *Cospers v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). 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).

Claimant's argument that a Wisconsin statute allows his license to remain active until the licensing board makes a decision on his renewal application and he should be allowed to work for the employer until the decision is made is not persuasive. Although the Wisconsin statute may allow claimant to practice in Wisconsin while his application is pending, the employer is required to ensure its nurses meet the employer's accreditation rules. Ms. Kruthoff credibly testified that the employer is required to have its nurses have an active nursing license and an expiration date in the future. Although claimant's nursing license may still say active, it is undisputed that his nursing license shows an expiration date that is in the past (February 28, 2018).

Claimant's argument that the website indicates credentialed license is current is also not persuasive. Although the website indicates his credentialed license is current, the website further states that his credentialed license is current through February 28, 2018. Therefore, it is reasonable for the employer to consider claimant's license no longer current as of March 1, 2018. Furthermore, it is also noted that the Wisconsin Department of Safety and Professional Services has refused to provide claimant with any written documentation that he is eligible to practice in the State of Iowa while his license renewal application is being reviewed.

The maintenance of a nursing license is the employee's responsibility without an agreement to the contrary. The employer is not obligated to accommodate claimant while his license expiration date is not in the future, but the employer does have a legal obligation to abide by healthcare statutes and regulations and is not to allow individuals with expired licenses to work at a healthcare facility. The employer is entitled to require its nurses to have expiration dates for their licenses in the future and suspend claimant pending resolution of his nursing license expiration date. Claimant's failure to update his expiration date on his nursing license as a known condition of the employment or provide written documentation from the Wisconsin Department of Safety and Professional Services that he is able to practice in the State of Iowa while his license renewal application is being reviewed, is misconduct sufficient to warrant a denial of benefits. Benefits are denied.

**DECISION:**

The April 16, 2018, (reference 02) unemployment insurance decision is affirmed. Claimant was suspended from employment for misconduct. Benefits are withheld until such time as claimant works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/rvs