

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DEBORAH J DETLEFS**  
Claimant

**GENESIS HEALTH SYSTEM**  
Employer

**APPEAL 24A-UI-03335-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/03/24  
Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant, Deborah J. Dettlefs, filed an appeal from the March 20, 2024, (reference 01) unemployment insurance decision that denied benefits effective March 1, 2024 based upon the conclusion she was discharged for conduct not in the best interest of the employer. The parties were properly notified of the hearing. A telephone hearing was held on April 18, 2024. The claimant participated and testified. The employer participated through Executive Director Bill Hauber and Nicole Lear, a human resources coordinator. Exhibit A and B were received into the record. The employer's proposed exhibits were not received because they were not sent to the claimant to comply with Iowa Admin. Code r. 871-26.15.

**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 worked as a full-time imaging mammography technologist from December 29, 2005, until she was separated from employment on March 1, 2024, when she was terminated. The claimant reported directly to the manager of the imaging center, Kim Dippel.

The employer has a value statement and a code of conduct that states fellow employees should be treated with respect and appreciation. The claimant received a copy of these documents around the time the employer assumed ownership of the property on December 29, 2005. There was not an orientation session or anything else like it that would explain what this vague expectation meant.

On June 19, 2015, the claimant received a written warning for violating the vision values and code of conduct after an argument in the preceding days with Ms. Dippel. Ms. Dippel asked the claimant to do diagnostic imaging of a patient, even without an order. The claimant balked at this request and characterized it as unethical. Ms. Dippel said, "Just do it anyway." The claimant

said, "That is my license on the line." The claimant was upset because this was inappropriate, and she was busy enough with her existing tasks. The written discipline stated that if the employer thought she violated the code of conduct and vision values in the future, then she could be terminated.

On February 28, 2024, the claimant was approached by a coworker. The coworker told her that she would have to do a fluoroscopy exam the following day. The claimant was bothered by this, because she had not done one in a couple of years. The claimant told her to stop in a normal voice. She added, "Let's get Kim [Dippel] and we will talk about this." The coworker persisted in emphasizing this as the claimant walked away back to the receptionist desk. The claimant reminded this worker in a loud voice, "You are not my boss. Please do not tell me what to do." The claimant retreated into Ms. Dippel's office and slammed the door because she was upset. The claimant sat about three feet away from Ms. Dippel and attempted to explain her frustration with this coworker ordering her around. The claimant then spoke with Bill Hauber. Ms. Dippel acted overly confused. The claimant was still frustrated in this conversation, but she sat with her hands relaxed in front of her on the other side of Ms. Dippel's office. Like Ms. Dippel, Mr. Hauber did not seem to recognize the reasonable source of her frustration. After speaking with Mr. Hauber, the claimant spoke with Radiologist Dr. Jeffrey C. Goree. Mr. Goree told the claimant it just sounded like she had a bad day and empathized with her frustration.

On March 1, 2024, the employer terminated the claimant due to the incidents on February 28, 2024, and June 19, 2015. It reasoned this violated its vision values and code of conduct because the claimant's voice was raised.

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

The administrative law judge concludes the employer has not met its burden to show the claimant was discharged on March 1, 2024, due to a knowing violation of a reasonable and uniformly enforced rule. Benefits are granted, provided she is otherwise eligible for benefits.

The decision in this case rests, at least in part, on the credibility of the witnesses. 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.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant's version of events to be more credible than the employer's recollection of those events.

Specifically, I find the claimant's description of what she was written up for in 2015 more credible. She provided specific details of these events. The employer only had what was written in notes that were not generated by either agent. Neither had spoken to Ms. Dippel prior to the

hearing to even get a secondhand understanding of the proposed exhibit other than reading the text which was vague.

I also find the claimant's description of what happened in Ms. Dippel's office as more credible. Mr. Hauber did provide at least secondhand testimony from Ms. Dippel, but it was mostly conclusory. He did not provide much detail about what Ms. Dippel found threatening about her manner, except the specific allegation to the claimant pointing her finger at her. I find the claimant's denial of this specific allegation more credible.

Iowa Code section 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.

Iowa Code section 96.5(2)b, c and d provide:

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:

b. Provided further, if gross misconduct is established, the department shall cancel the individual's wage credits earned, prior to the date of discharge, from all employers.

c. Gross misconduct is deemed to have occurred after a claimant loses employment as a result of an act constituting an indictable offense in connection with the claimant's employment, provided the claimant is duly convicted thereof or has signed a statement admitting the commission of such an act. Determinations regarding a benefit claim may be redetermined within five years from the effective date of the claim. Any benefits paid to a claimant prior to a determination that the claimant has lost employment as a result of such act shall not be considered to have been accepted by the claimant in good faith.

d. For the purposes of this subsection, "*misconduct*" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

(1) Material falsification of the individual's employment application.

**(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.**

(3) Intentional damage of an employer's property.

(4) Consumption of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in a manner not directed by the manufacturer, or a combination of such substances, on the employer's premises in violation of the employer's employment policies.

(5) Reporting to work under the influence of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in an off-label manner, or a combination of such substances, on the employer's premises in violation of the employer's employment policies, unless the individual is compelled to work by the employer outside of scheduled or on-call working hours.

(6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.

(7) Incarceration for an act for which one could reasonably expect to be incarcerated that result in missing work.

(8) Incarceration as a result of a misdemeanor or felony conviction by a court of competent jurisdiction.

- (9) Excessive unexcused tardiness or absenteeism.
- (10) Falsification of any work-related report, task, or job that could expose the employer or coworkers to legal liability or sanction for violation of health or safety laws.
- (11) Failure to maintain any licenses, registration, or certification that is reasonably required by the employer or by law, or that is a functional requirement to perform the individual's regular job duties, unless the failure is not within the control of the individual.
- (12) Conduct that is libelous or slanderous toward an employer or an employee of the employer if such conduct is not protected under state or federal law.
- (13) Theft of an employer or coworker's funds or property.
- (14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

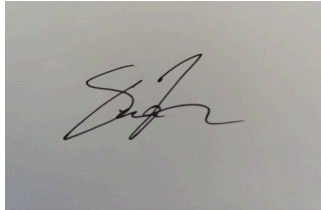
The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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). 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).

I do not find the employer's application of its rule to these two events separated by a half a decade reasonable. The claimant was warned after legitimately balking at an inappropriate request from her supervisor to run a diagnostic scan without a doctor's order. This written warning is totally irrational in that context.

I further find that the employer's characterization of the vision values and code of conduct to be too vague to put the claimant on notice that she would be terminated for merely yelling. That is not to say that I condone her actions. But Ms. Lear and Mr. Hauber conceded that there was nothing in writing prohibiting these things specifically. The claimant also did not use profanity in addressing the coworker. She also used words like "please" in requesting this coworker stop impressing on her these additional work duties. Finally, the claimant's insistence that Ms. Dippel clarify these instructions, so that she knew they were coming from someone with authority is reasonable. Given these observations, I find the employer cannot show it terminated the claimant on March 1, 2024, for a knowing violation of a reasonable and uniformly enforced policy. Benefits are granted, provided she is otherwise eligible.

**DECISION:**

The March 20, 2024, (reference 01) unemployment insurance decision is REVERSED. The employer has not met its burden to show the claimant was discharged on March 1, 2024, due to a knowing violation of a reasonable and uniformly enforced rule. Benefits are granted, provided she is otherwise eligible for benefits.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is centered within a rectangular box.

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Sean M. Nelson  
Administrative Law Judge II

April 22, 2024  
Decision Dated and Mailed

smn/scn

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.