IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

LEIGH A DAHLEM Claimant **CARE INITIATIVES** Employer	**APPEAL 21A-UI-13844-AD-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 03/28/21** **Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On June 13, 2021, Leigh Dahlem (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated June 10, 2021 (reference 01) that denied benefits based on a finding claimant was discharged on March 30, 2021 for conduct not in the best interest of employer.

A telephone hearing was held on August 12, 2021. The parties were properly notified of the hearing. The claimant participated personally. Care Initiatives (employer/respondent) participated by Team Director Kali Stone. Clinical Director Miriam Yokum participated as a witness for employer. Employer was represented by Hearing Rep. Jennifer Groenwold.

Employer's Exhibits 1-8 and Claimant's Exhibits 1-6 were admitted. Official notice was taken of the administrative record.

ISSUES:

I. Was the separation from employment a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as an on-call nurse. Claimant's first day of employment was April 11, 2016. The last day claimant worked on the job was March 29, 2021. Claimant's immediate supervisor was Stone. Claimant was discharged by Stone on March 30, 2021.

Claimant was discharged due to her discussing a coworker's wages with a third coworker and because of her availability. Claimant was told at the time of discharge that she was being let go because Stone "did not feel like this was a good fit anymore." During the discharge meeting, Stone "confronted [claimant] about discussing other people's wages without them knowing or being present as that is confidential information." She then "went on to discuss [claimant's] availability

and willingness to work on the weekends and be available during the week for resources and or staff meetings." See Employer Exhibit 7.

Employer did not provide any testimony during the hearing indicating the discharge was due to claimant's availability. Employer's testimony instead focused solely on claimant's alleged violation of its confidentiality policy. An employee reported to Stone around March 15, 2021 that claimant had spoken with her about a coworker making more than claimant. Claimant had also emailed Stone approximately a week earlier stating she was aware of what others were making and inquiring as to why she was paid less.

Employer determined the only way claimant could have known what the other employee was making was by accessing confidential documents. However, employer acknowledged such files were locked away and claimant would have no way of accessing them. It offered no evidence suggesting claimant had broken into any such files. The administrative law judge finds claimant learned of the coworker's wage information because a notepad with the wage written on it was in open view in Stone's office while claimant was in the office to take a COVID-19 test. Claimant was not seeking out the information but could not help noticing it sitting directly in front of her while she was sitting and waiting for the results of her test.

Employer's confidentiality policy prohibits dissemination of Protected Health Information, Business Information, and Employee Information. It states in part that the policy is designed "to take reasonable measures to prevent unauthorized access or use of Employee Information." The policy defines Employee Information to mean employee files including personal files, medical files, and so on which include information such as job applications, disciplinary actions, and other information. Listed among the types of information is "salary increases" and "other employment records." The policy further provides that "employee files are the property of Care Initiatives and access to the information is restricted." The policy does not specifically prohibit discussing wage information with coworkers. See Employer's Exhibit 2.

Claimant signed a "Pledge for Confidentiality" at the time of hire which only prohibited the sharing of Personal Health Information. See Employer's Exhibit 4. Employer's "Facility Rules" do not prohibit discussing wage information. See Employer's Exhibit 3.

Employer was concerned that, because claimant had mentioned a coworker's wages to another coworker, she may also share confidential patient information. However, this was purely speculative. There was no evidence presented suggesting claimant had done so in the past. Claimant had never been warned or disciplined for similar reasons prior to being discharged. Claimant knew that it might be inappropriate or considered gossip for her to share the coworker's wage information with another employee. However, she did not specifically know that it was a violation of employer's policies. It was common for other employees to discuss this information as well.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated June 10, 2021 (reference 01) that denied benefits based on a finding claimant was discharged on March 30, 2021 for conduct not in the best interest of employer is REVERSED.

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 provides in relevant part:

> 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 bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v. Emp't Appeal Bd*., 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). 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).

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 is on deliberate, intentional, or culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman, Id.* In contrast, 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. *Newman*, *Id*.

When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.,* 386 N.W.2d 552, 554 (Iowa Ct. App.1986). However, conduct asserted to be disqualifying misconduct

must be both specific and current. *West v. Emp't Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd*., 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd*., 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

Employer has not carried its burden of proving claimant is disqualified from receiving benefits because of a current act of substantial misconduct within the meaning of Iowa Code section 96.5(2).

Claimant was not on notice that discussing wage information was a violation of employer's confidentiality policy. Claimant's conduct did not clearly violate the plain language of the employer's confidentiality policy. Furthermore, claimant ever been warned or disciplined for similar conduct. And finally, others regularly engaged in the same or similar conduct. Because claimant was not on notice of the policy she could not willfully violate it. While claimant acknowledges that discussing wage information may have been inappropriate or considered gossip, her conduct is best described as an isolated instance of poor judgment rather than substantial, job-related misconduct.

Employer's assumption that claimant learned of the wage information by theft or deceit or some other form of misconduct is unsupported by the evidence. Employer's speculation that claimant may share confidential patient information was just that and does not support a finding of misconduct, either. Finally, employer presented no evidence showing any issues with claimant's availability rose to the level of misconduct. For these reasons benefits are allowed, provided claimant is not otherwise disqualified or ineligible.

DECISION:

The decision dated June 10, 2021 (reference 01) that denied benefits based on a finding claimant was discharged on March 30, 2021 for conduct not in the best interest of employer is REVERSED. The separation from employment was not disqualifying. Benefits are allowed, provided claimant is not otherwise disqualified or ineligible.

Andrew B. Duffelmeyer
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August 19, 2021
Decision Dated and Mailed

abd/kmj