

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PATIENCE ZULU
Claimant

URBANDALE CARE GROUP LLC
Employer

APPEAL 19A-UI-03737-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/24/19
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 29, 2019, (reference 03) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for violation of a known company rule. The parties were properly notified of the hearing. A telephonic hearing was held on May 29, 2019. The claimant, Patience Zulu, participated. The employer, Urbandale Care Group, L.L.C., did not register a telephone number at which to be reached and did not participate in the hearing. Claimant's Exhibit A was received and admitted into the record. The administrative law judge took official notice of the administrative record.

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 full-time, most recently as a CNA, from February 21, 2019, until March 29, 2019, when she was discharged. Claimant was given a termination paper by managers Nick and Amber. This document referred to claimant's personal business and it also referred to claimant missing an activity when the employees had to find a resident. Claimant explained that she was on break at the time this activity occurred. She had received permission from her co-worker Nate to go on break before she left. Nate agreed to watch her residents while she was gone. When claimant returned, she learned that she had missed the activity. Claimant had never been warned for either of these issues in the past. She was not aware that her job was in jeopardy. Claimant learned after her separation that she was supposed to have received permission to go on break from a manager. However, no one told her this during her employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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 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.

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. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if

the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

In this case, the employer did not participate in the hearing or submit any documentation in lieu of testimony for the hearing. Claimant provided unrefuted testimony that she was discharged for issues she had never been warned for previously. The employer has not met its burden of proving that claimant was discharged from disqualifying misconduct. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The April 29, 2019, (reference 03) unemployment insurance decision is reversed. 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.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn