

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**LORALIE L GOMEZ**

Claimant

**GENESIS HEALTH SYSTEM**

Employer

**APPEAL 17A-UI-08292-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/23/17**

**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 9, 2017, (reference 01) unemployment insurance decision that denied benefits based upon her discharge for failure to perform satisfactory work. The parties were properly notified of the hearing. A telephone hearing was held on August 31, 2017. The claimant participated and testified. The employer did not participate.

**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 as an office receptionist from November 6, 1989, until this employment ended on July 21, 2017, when she was discharged.

On July 18, 2017, one of claimant's coworkers reported to her manager, who was not in the office that day, that there were several issues with her performance. The coworker alleged claimant had left her phone off for a long period of time, had not followed one of the employer's rules regarding eye contact with patients, and had taken an excessive amount of time to place a copy of a prescription in a patient file. Claimant had been written up three times before for unrelated issues and under the employer's policies was therefore terminated.

Claimant denied engaging in any of the conduct alleged by her coworker. Claimant explained her phone may have been off because she was working with a doctor on an issue that day that required her to frequently be away from her desk, but that she always made sure her phone was turned back on when she returned. Claimant further testified she believed she was following the rule involving eye contact. Finally, claimant testified the issue with the prescription was a misunderstanding. Claimant explained she was asked about a prescription copy in her desk, as it was believed to be a copy of a prescription issued the prior week, but this belief was incorrect. Claimant testified the copy she had was from a prescription that had just been issued within the

last half hour and she had not yet had a chance to place it in the file. Claimant testified she had never received prior discipline for any of these types of incidents before.

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

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

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.

871 IAC 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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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). 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).

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.

Claimant was discharged based on issues with her performance as reported by a coworker on July 18, 2017. Claimant generally denied the allegations made against her by her coworker. The employer failed to present any evidence indicating claimant did engage in misconduct, as is its burden. Even if the employer had presented evidence supporting the allegations made by claimant's coworker, the conduct for which she was discharged were merely an isolated incidents. To the extent that the circumstances surrounding each incident were not similar enough to establish a pattern of misbehavior, the employer has only shown that claimant was negligent. "[M]ere negligence is not enough to constitute misconduct." *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 666 (Iowa 2000). A claimant will not be disqualified if the employer shows only "inadvertencies or ordinary negligence in isolated instances." 871 IAC 24.32(1)(a). When looking at an alleged pattern of negligence, previous incidents are considered when deciding whether a "degree of recurrence" indicates culpability. Claimant was careless, but the carelessness does not indicate "such degree of recurrence as to manifest equal culpability, wrongful intent or evil design" such that it could accurately be called misconduct. Iowa Admin. Code r. 871-24.32(1)(a); *Greenwell v. Emp't Appeal Bd.*, No. 15-0154 (Iowa Ct. App. Mar. 23, 2016). Ordinary negligence, in anything, is all that is proven here. Because the employer has failed to establish disqualifying misconduct, benefits are allowed, provided claimant is otherwise eligible.

**DECISION:**

The August 9, 2017, (reference 01) 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.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs