

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

YOLANDA J HAGLUND
Claimant

APPEAL NO. 17A-UI-11886-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC
Employer

OC: 10/15/17
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Yolanda Haglund (claimant) appealed a representative's November 15, 2017, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Good Samaritan Society (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 11, 2017. The claimant participated personally. The employer was represented by Thomas Kuiper, Hearings Representative, and participated by Jennifer Lappegard, Human Resources Coordinator, and Jackie Sheridan, Director of Nursing. Brent Baskerville, Administrator, observed the hearing. The employer offered and Exhibit 1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 12, 2016, as a full-time charge nurse/licensed practical nurse. The claimant signed for receipt of the employer's handbook on April 12, 2016. The handbook contains a Code of Ethics. A portion of the Code of Ethics states, "I will perform my duties in a way that promotes the public's trust in the evangelical Lutheran Good Samaritan Society." From time to time the claimant heard other employees use foul language in frustration.

On May 12, 2016, the employer issued the claimant a counseling notice for missing treatments and reports. No consequences were listed for further similar behavior. Also on May 12, 2017, the employer issued the claimant a Performance Improvement Plan. The employer notified the claimant that further infractions could result in termination from employment.

On March 9, 2017, the employer issued the claimant a written warning for infection control. On July 10, 2017, the employer issued the claimant a written warning for failure to immediately

report a serious condition to the family. The employer notified the claimant both times that further infractions could result in termination from employment.

On October 2, 2017, the claimant was in charge of one hallway and another nurse was supposed to take care of another hallway. The other nurse was tardy. The claimant was working back and forth trying to cover all of the residents. She had all of the doctor's orders, laboratory results, and medications. When the other nurse arrived she wanted the claimant to give her the skill notes. The claimant was busy but gave her one set. The other nurse wanted all of them. The claimant told the other nurse that she would provide them when she got caught up. The other nurse complained about the claimant to the scheduler and the director of nursing. The claimant had a doctor's appointment after work and did not take her lunch break so she could finish her work and leave on time.

On October 2, 2017, the director of nursing approached the claimant in the hallway near a resident's room with her med cart. The director of nursing reminded the claimant that she was supposed to share her notes with the other nurse. The comment struck the claimant wrong and the director of nursing could see that she was upset. The claimant said that the co-worker had not shared with her in the past and asked if she needed "to start bitching and complaining about everything". The director of nursing told the claimant to come to her if this happened again and walked away.

On October 5, 2017, the employer terminated the claimant for using profanity and acting in an unprofessional manner. If the conversation had occurred in the director of nursing's office, the claimant may not have been terminated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The claimant had a good faith error in judgment on October 2, 2017, when she vented to her supervisor. The supervisor also had a good faith error in judgment when she continued a conversation with a subordinate in a hallway once she knew the subordinate was upset. The claimant's behavior does not rise to the level of misconduct. She had never used profanity at work before. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's November 15, 2017, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs