

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JENNIFER MCDOWELL
Claimant

MERCY MEDICAL CENTER
Employer

APPEAL 18A-UI-09761-AW-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/26/18
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Jennifer McDowell, Claimant, filed an appeal from the September 17, 2018 (reference 01) unemployment insurance decision that denied benefits because she was discharged from work with Mercy Medical Center for causing dissension. The parties were properly notified of the hearing. A telephone hearing was held on October 25, 2018 at 11:00 a.m. Claimant participated with her attorney Leonard Bates. Employer did not participate. Claimant's Exhibit A was admitted.

ISSUE:

Whether claimant's separation was a discharge for disqualifying job-related misconduct.

FINDINGS OF FACT:

As claimant was the only witness, the administrative law judge makes the following findings of fact based solely upon claimant's testimony: Claimant was employed full-time as the Director of Radiology from October 24, 2016 until her employment with Mercy Medical Center ended on August 13, 2018. Claimant's direct supervisor was Mary Brobst, Nursing Officer and Senior Vice President.

On August 13, 2018, employer terminated claimant's employment; the reasons employer provided were that claimant (1) required an employee to elaborate details of a safety event, (2) displayed intimidating conduct and (3) acted contrary to employer's mission and vision. Employer did not provide claimant with detailed information or specific incidents which comprised the basis for her termination. On June 21, 2018, claimant received a positive performance evaluation from her direct supervisor. Claimant had no issues and received no criticism between the date of her performance evaluation and her discharge. Claimant had received no prior warnings regarding her conduct and did not suspect that her job was in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

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

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 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and 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.

Further, 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). 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. 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 law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Employer has not provided detailed facts as to the specific reason for claimant's discharge. Employer's mere allegation of misconduct without additional evidence is not sufficient to meet its burden of proving disqualifying, job-related misconduct. Claimant was discharged for no disqualifying reason. Benefits are allowed.

DECISION:

The September 17, 2018 (reference 01) unemployment insurance decision is reversed. Benefits are allowed if the claimant is otherwise eligible.

Adrienne C. Williamson
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Decision Dated and Mailed

acw/rvs