

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MICHELLE L HARLOW**  
Claimant

**GRAPETREE MEDICAL STAFFING INC**  
Employer

**APPEAL 21A-UI-04084-LJ-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 03/29/20**  
**Claimant: Appellant (5)**

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Iowa Code § 96.5(2)a – Discharge for Disqualifying Misconduct  
Iowa Coe § 96.5(1) – Voluntary Quit from Employment

**STATEMENT OF THE CASE:**

On January 28, 2021, the claimant, Michelle L. Harlow, filed an appeal from the January 22, 2021 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit her employment for personal reasons. The parties were properly notified of the hearing. A telephonic hearing was held on Friday, April 2, 2021. The claimant, Michelle L. Harlow, participated. The employer, Grapetree Medical Staffing, Inc., participated through Zachary Myer, Human Resources Specialist. Claimant's Exhibit A was received and admitted into the record without objection.

**ISSUE:**

Did claimant Michelle L. Harlow voluntarily quit her employment without good cause attributable to the employer or was she discharged from employment for disqualifying misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time on-call, most recently as a traveling CNA, from sometime in July 4, 2017 until September 2, 2020, when she was discharged for failing to maintain her credentials.

Claimant failed to take and pass a hand-washing test by August 30, 2020. This test was required to be a credentialed CNA. On June 16, 2020, the employer gave her additional study material to assist her in preparing for the test. The employer also informed her that she could lose her job if she did not take – and pass – this test by August 30, 2020.

Claimant was aware this test was required, and she knew she could lose her job if she did not take and pass the test. She explained that a wind storm had made her internet unreliable, and her internet failed the day she tried to take the test. She admits this was not the last possible day to take the test. She also admits she could have gone somewhere else to access the internet and take the test.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged by her employer for disqualifying, job-related misconduct. Benefits are withheld.

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).

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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Claimant was required to take and pass a hand-washing test in order to maintain her CNA credentials and continue her employment. The employer told her this, and she knew she could lose her job if she did not do this. Nevertheless, claimant failed to take and pass the test by the

August 30 deadline. Claimant did not rebut employer's reason for the separation and the failure to maintain her credentials as a known condition of the employment was misconduct sufficient to warrant a denial of benefits.

**DECISION:**

The January 22, 2021 (reference 01) unemployment insurance decision is modified with no change in effect. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld effective August 30, 2020, until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



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April 07, 2021  
Decision Dated and Mailed

lj/ol