

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LINDA J LEE
Claimant

CBS STAFFING LLC
Employer

APPEAL 20A-UI-01596-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/19/20
Claimant: Appellant (4)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(12) – Supplemental Part-time Employment

STATEMENT OF THE CASE:

On February 21, 2020, the claimant filed an appeal from the February 11, 2020, (reference 01) unemployment insurance decision that denied benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on March 10, 2020. Claimant participated. Employer participated through owner Brad Ortmeier.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on December 13, 2019. Claimant last worked as a part-time licensed practical nurse. Claimant was separated from employment on January 17, 2020, when she was discharged.

Employer is a temporary staffing agency. Employer has a policy that states that once an employee agrees to work a shift, the employee is obligated to work the shift. Claimant was aware of the policy.

Employer asked claimant to work a shift at a long-term care facility on January 17, 2020. Claimant agreed.

Normally, at a shift change, the outgoing nurse gives the oncoming nurse a report on the patients, narcotics are counted and keys are transferred, and computer passwords and credentials are shared. This process normally takes about a half hour.

Claimant was scheduled to work at the facility from 6:00 p.m. until 6:00 a.m. Claimant arrived at the facility at about 5:45 p.m. The outgoing nurse seemed tired and stressed out. The outgoing nurse gave claimant a report that did not match other medical records and the actual residents in the rooms at the facility. The outgoing nurse did not give claimant the credentials to log onto the facility's computer systems and said the computer was not working and she had not reported it to employer. The narcotic count was not correct. Even so, the outgoing nurse signed off possession of the medication cart and kept trying to leave the facility. The claimant had to ask the nurse to stay several times because the narcotic count was off. The outgoing nurse had not logged medications she distributed to patients that day and could not get the narcotic count to match up, even after trying for over an hour. Claimant did not feel comfortable working the shift at the facility, realizing the serious issues the facility was having.

At around 7:00 p.m., claimant called employer and spoke with the dispatcher named Alyce. Claimant said she would not be accepting the medication cart keys and staying at the assignment because she feared she was putting her license in jeopardy by doing so. Alyce told claimant not to leave and they would try to get the situation straightened out so she could work the shift. Alyce tried to tell claimant she would talk to someone at the facility. Claimant would not listen to Alyce. Alyce called owner Brad Ortmeier so he could try to speak with claimant.

Claimant then spoke to the director of nursing who was at the facility. The director of nursing asked claimant to reconsider and asked if she could get matters straightened out so claimant would feel comfortable and could work the shift. Claimant said she would not reconsider and the director of nursing directed claimant to get out of the building.

At around 7:30 p.m., owner Brad Ortmeier called claimant. Claimant was in her vehicle getting ready to leave. Ortmeier told claimant she needed to stay and cover the assignment. Claimant said she could not do so in good conscience. Ortmeier told claimant she needed to cover the assignment or she would be fired. Claimant said she could not do that. Ortmeier then said she would be fired. Claimant said okay and she left.

Claimant had previously left other assignments when she felt the facility was putting her nursing license in jeopardy. Claimant discussed the issues with employer, but employer had not previously disciplined claimant for her conduct. January 17, 2020, was the second time claimant left a facility within two weeks for a similar reason.

This was part-time, supplemental employment for claimant. Claimant has other full-time wages in her base period.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from this part-time, supplemental employment due to job-related misconduct, but may be otherwise eligible for benefits.

Iowa Code § 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 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.

The employer has the burden to prove the claimant was discharged for job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer made the correct decision in ending claimant's employment, 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 justifying termination of an employee and misconduct warranting denial of unemployment insurance benefits are two different things. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

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 is not 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).

In this case, claimant was reasonably concerned that working the assignment at the facility would put her license in jeopardy. But claimant should have given the director of nursing at the facility a chance to straighten out the issues before leaving. Employer asked claimant to do that and so did the director of nursing. Claimant would have been paid for her time at the facility and no one was stating she *must* take the key to the medication cart and work the shift if things were not straightened out. Employer was only asking claimant to give the facility another chance to straighten out the issues before leaving. Employer warned claimant that her failure to do so would result in termination and claimant left anyway. Although she had not been previously disciplined for her previous similar actions, claimant's actions were in deliberate disregard of

employer's interests and she was made aware on January 17, 2020, that she could be terminated for them. Employer established claimant was terminated for misconduct.

Workers who are disqualified based on a separation from part-time, supplemental employment may be eligible to receive reduced unemployment insurance benefits, provided they have sufficient wages credits from other employers to be monetarily eligible and provided they are eligible based on separations from those other employers. Iowa Code 96.5(12). In that situation, the part-time, supplemental employer would not be charged for benefits paid to claimant and the wage credits the claimant accrued during the part-time, supplemental employment would not be considered in determining the claimant's weekly benefit amount until the claimant requalifies for benefits by earning ten times the weekly benefit amount.

Claimant's employment with employer was part-time, supplemental work. Therefore, she is only disqualified from drawing on the wage credits earned with this employer. She may be eligible for benefits based upon other wages in her base period. Employer will not be charged for benefits.

DECISION:

The February 11, 2020, (reference 01), unemployment insurance decision is modified in favor of the appellant. The claimant was discharged for misconduct and has not requalified for benefits but appears to be otherwise monetarily eligible. Benefits are allowed, provided she is otherwise eligible. The account of this part-time employer (361323) shall not be charged.



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Decision Dated and Mailed

cal/scn