IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

ASHLEY E SMITH Claimant **CARE INIATIVES** Employer	**APPEAL 21A-UI-05667-S1-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 10/25/20** **Claimant: Appellant (2)**

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Ashley Smith (claimant) appealed an Iowa Workforce Development February 16, 2021, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits after a separation from work with Care Initiatives (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 27, 20201. The claimant participated personally. The employer was represented by Alyce Smolsky, Hearings Representative, and participated by Kaitlyn Lewis, Administrator; Lisa Knights, Director of Nursing; and Danielle Hansen, Licensed Practical Nurse/Charge Nurse.

The claimant offered and Exhibit A was received into evidence. The employer offered and Exhibit One was received into evidence. The administrative law judge took official notice of the administrative file.

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 worked for the employer from January 18, 2016, through October 24, 2020, as a full-time nurse manager. There is no policy regarding profanity in the handbook. The employer's handbook had a policy that called for the termination of an employee with two incidents of no call, no show. On the weekend, the claimant was to report absence to the nurse. The employer did not issue the claimant any warnings during her employment.

On October 24, 2020, the administrator and director of nursing sent a group text to the claimant about a person who was being admitted to the facility after noon that Saturday, October 24, 2020. The claimant was to report to the facility for that admission. The claimant knew there could be issues with medication errors with such an admission when there was not due diligence prior to the admission and communicate with the patient's physician.

From home, she texted with her superiors about her concerns for the facility's protocol and the patient's care. She became frustrated when her superiors said they could do nothing. She was concerned that there were discrepancies between the patient's hospital medications and the medications on his orders. She thought there should have been an effort to contact the physician prior to the admittance. Twice, the administrator told her to contact the emergency pharmacy. This implied that the claimant should fill whatever prescriptions were listed and not worry about what the patient was actually taking in the hospital until Monday when the patient saw a doctor. The claimant said, "You don't have to tell me twice". The administrator said, "Well apparently I did". The claimant texted, "Fuck off". The director of nursing said, "Ashley!!!!!! No!!!!!!

The claimant left home and went to work. She met with the new admission's wife but could not control her crying. The nurse saw the claimant and hugged her. The claimant went to the bathroom to try to take control of her feelings. She met again with the wife of the resident and tried to listen to everything. When she could not control her emotions and stop crying, she told the nurse she had to leave.

After the admission, the claimant was scheduled to work again at 2:00 p.m. on October 24, 2020. She sent the nurse a text at 2:08 p.m. The nurse responded that she hoped the claimant felt better. On October 25, 2020, the director of nursing sent the claimant a text. It said that she hoped the claimant was feeling better and the shift was covered.

On October 26, 2020, the employer terminated the claimant for using profanity in her text on October 24, 2020, and being a no call, no show on October 24, 2020, and October 25, 2020.

REASONING AND CONCLUSIONS OF LAW:

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).

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.

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 employer terminated the claimant for two no call, no shows and profanity.

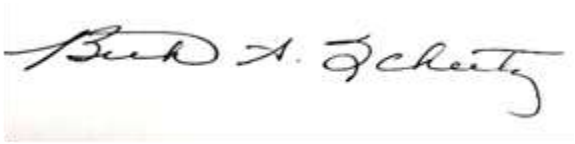
On October 24, 2020, the claimant reported her absence to the nurse. On October 25, 2020, the director of nursing told the claimant to stay home. The employer has failed to provide any evidence of a no call, no show.

The employer also terminated the claimant for using profanity on October 24, 2020, prior to the start of her shift. An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation.

The employer had not previously warned the claimant about the use of profanity and profanity is not prohibited in the handbook. The claimant did not engage use the profanity at work. The employer has not met the burden of proof to establish the claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer did not provide sufficient evidence of job-related misconduct. It did not meet its burden of proof to show misconduct. Benefits are allowed provided the claimant is otherwise eligible.

DECISION:

The representative's February 16, 2021, decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.



Beth A. Scheetz
Administrative Law Judge

May 03, 2021
Decision Dated and Mailed

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