

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELE L WADE
Claimant

APPEAL NO: 13A-UI-09549-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

GASTROENTEROLOGY ASSOCIATES PC
Employer

**OC: 07/28/13
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

The employer appealed a department decision dated August 16, 2013, reference 01, that held the claimant was not discharged for misconduct on July 30, 2013, and benefits are allowed. A telephone hearing was held on September 24, 2013. The claimant participated. Tonya King, Practice Administrator, participated for the employer. Employer Exhibits 1 – 8 was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant was hired on November 28, 2011 and became a full-time front desk receptionist on August 20, 2012. She last worked for the employer on July 25, 2013. She received the employer policies that include a “Mission Statement” with an emphasis on what are patients.

The employer has a written discipline and warning policy. The progressive discipline steps are: oral warning, formal verbal warning, written warning, final warning and termination. The employer has the discretion to waive one or more steps and impose discipline of a lesser or greater degree.

The employer issued claimant a documented oral warning on June 26, 2012 due to a patient care complaint issue. The claimant received it and she commented the patient had entered the clinic abruptly, wanted another staff to help who was not available, and was loud.

The employer issued claimant a written warning on February 1, 2013 due to a patient complaint. The patient overheard claimant make an unkind reference about the workplace. Claimant received it but she questioned whether she had made such a remark.

On July 19 a patient came to the clinic without an appointment and asked claimant to see a doctor. There was no doctor available. Although policy requires a patient appointment, claimant replied she would see what she could do. She told patient that a nurse would be arriving in about 15 minutes who could see him. Claimant had no further contact with this patient.

The July 19 patient complained to the employer, and the practice administrator called him on July 24. He said he felt like claimant was putting him off when asking for help, and he felt she did not care.

The administrator consulted with the head clinic physician and the employer decided to waive a final warning and discharged claimant on July 30 for a third incident of customer service failure.

The employer did not personally participate in department fact finding. An employer representative faxed documents instead of a person offering direct information to the department fact finder.

REASONING AND CONCLUSIONS OF LAW:

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 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.

871 IAC 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for a current act of misconduct in connection with employment on July 24, 2013. The employer must establish the July 19 incident is based on misconduct.

The employer chose to waive the issuance of a final written warning to claimant and discharged on the basis of the most recent incident in light of a documented oral warning and written warning. While the employer has a mission statement that places an emphasis on patient care/treatment, any violation of that protocol is subjective based on the facts of any incident.

The July 19 patient came to the clinic without a doctor appointment and claimant instead of telling him he could not be treated for lack of a doctor accommodated him by arranging a nurse examination. A reasonable inference is the patient was shifting his dismay of not being able to see a doctor to claimant who was doing her best to arrange a nurse examination.

The employer decision to bypass the final warning disciplinary stage based on the July 19 incident is not based on a current act of job disqualifying misconduct.

DECISION:

The department decision dated August 16, 2013, reference 01, is affirmed. The claimant was not discharged for a current act of misconduct on July 30, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css