

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**BRITTANY L GAPPA**  
Claimant

**APPEAL NO: 19A-UI-02836-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**STACYVILLE COMMUNITY  
NURSING HOME**  
Employer

**OC: 03/10/19**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the March 27, 2019, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 24, 2019. The claimant participated in the hearing. Kay Fravel, Administrator; Barb Wendel, DON; and Jeanie Laube, Assistant DON; participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time CNA for Stacyville Community Nursing Home from April 30, 2018 to March 11, 2019. She resigned her employment when faced with termination for disrupting the facility with Facebook posts about the employer in violation of the employer's policy.

On March 3, 2019, the claimant made comments on Facebook including, "They don't give a shit about anyone or anything. They do not care about the nursing home. All they are worried about is money and not patient care. If it wasn't for us aides they wouldn't have a job." She followed those comments with a meme stating, "People don't leave bad jobs....They leave because of bad bosses, poor management, who don't appreciate their value." A maintenance man at the facility printed the posts and a concerned citizen called Dietary Supervisor Kim Adams to ask what was going on and referenced the claimant's Facebook posts. A board member also called. Ms. Adams and the maintenance man both notified DON Barb Wendel about the posts. On March 11, 2019, the employer met with the claimant planning to terminate her employment for violating its ethics and social media policy. The claimant anticipated she was going to be discharged and presented the employer with her resignation effective March 24, 2019. The employer accepted the claimant's resignation and made it effective immediately.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

Off duty conduct must be "work related" if it is to be grounds for discharge and disqualification for misconduct. That is, it must have a direct, negative effect on the employer. *Diggs v. Employment Appeal Board*, 478 N.W.2d 432 (Iowa App. 1991).

In order for an employer to show that its employee's off-duty activities rise to the level of misconduct in connection with the employment, the employer must show by a preponderance of the evidence:

That the employee's conduct (1) had some nexus with the work; (2) resulted in some harm to the employer's interest; and (3) was in fact conduct which was (a) violative of some code of behavior impliedly contracted between employer and employee, and (b) done with intent or knowledge that the employer's interest would suffer.

*Dray v. Director*, 930 S.W.2d 390 (Ark. App. 1996); *In re Kortba*, 418 N.W.2d 313 (SD 1988), quoting *Nelson v. Department of Employment Security*, 655 P2d 242 (WA 1982); 76 Am. Jur 2d, Unemployment Compensation Sections 77-78.

Recently Facebook issues have resulted in disqualification. Negative comments made on social media about the employer have a tangible negative effect. The same is true of negative comments about co-workers which result in a hostile work environment and bullying.

The claimant's posted comments in this case were clearly referring to the employer as evidenced by the fact community members and others who read her Facebook page contacted the employer to ask about it. The claimant's actions did not occur in a vacuum but rather a small community where it was common knowledge to whom the claimant was referring. The claimant's actions were related to work in that her comments were about the employer, harmed the employer's reputation within the community and violated the employer's social media policy. The claimant stated she was aware of the policy and knew it could lead to termination.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

#### **DECISION:**

The March 27, 2019, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld 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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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn