

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANGELA M BROWN
Claimant

APPEAL 18A-UI-12332-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROSE VISTA HOME INC
Employer

**OC: 12/02/18
Claimant: Appellant (1)**

Iowa Code § 96.5(2) – Discharge for Misconduct
Iowa Admin. Code r. 871-24/32 – Discharge for Misconduct

STATEMENT OF THE CASE:

Angela Brown, Claimant, filed an appeal from the December 21, 2018 (reference 01) unemployment insurance decision that denied benefits because she was discharged from work with Rose Vista Home, Inc. for conduct not in the best interests of her employer. The parties were properly notified of the hearing. A telephone hearing was held on January 14, 2019 at 9:00 a.m. Claimant participated. Employer participated through Jason Sherer, Administrator, and Cathy Renz, Director of Nursing. No exhibits were admitted.

ISSUE:

Whether claimant's separation was a discharge due to disqualifying job-related misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a Certified Nursing Assistant (CNA) from May 17, 2018 until her employment with Rose Vista Home, Inc. ended on November 29, 2018. (Sherer Testimony) Claimant's direct supervisor was Cathy Renz. (Sherer Testimony)

On November 26, 2018, claimant did not use a gait belt when transferring a resident. (Sherer Testimony; Renz Testimony) After claimant dressed the resident, who has cognitive deficits, a coworker told claimant that the resident's pants were put on backwards; claimant refused to change the patient's pants and responded, "he doesn't know the difference." (Sherer Testimony; Renz Testimony) This incident came to employer's attention on November 27, 2018. (Sherer Testimony) Employer sent claimant home from work pending the outcome of an investigation. (Renz Testimony) Employer investigated the events of November 26, 2018 by interviewing three witnesses. (Renz Testimony) During employer's investigation, it learned that another resident, without cognitive deficits, alleged claimant took his blanket from him on November 26, 2018. (Renz Testimony) On November 29, 2018, employer notified claimant that her employment was terminated due to unsatisfactory care of residents. (Sherer Testimony)

Employer has a handbook, which sets forth residents' rights, including the right to be treated with dignity. (Sherer Testimony) Claimant received a copy of the handbook. (Claimant Testimony) Claimant was trained to use a gait belt to transfer residents during her CNA classes. (Sherer Testimony) Claimant knows how to use a gait belt and understands its importance in transferring residents for both the residents' and her safety. (Claimant Testimony)

Claimant received a prior written warning regarding resident safety on October 15, 2018 because she transferred a resident from one place to another without using a gait belt as required. (Sherer Testimony) The written warning does not state that further violations may result in claimant's termination; however, the warning does state that following the proper procedure for transfer of residents is mandatory. (Renz Testimony) Claimant received two verbal warnings regarding the proper way to transfer residents prior to her written warning. (Renz Testimony)

Claimant alleges that she used the gait belt when she transferred the resident and can think of no reason why her coworkers would state otherwise. (Claimant Testimony) At first, claimant did not recall making the statement regarding the resident with cognitive deficits not knowing that his pants were on backward; she later testified that she may have made the statement. (Claimant Testimony) Claimant does not recall taking a blanket away from a resident on November 26, 2018, but adds that she dealt with a lot of people that day. (Claimant Testimony) Claimant alleges that she did not know that her job was in jeopardy. (Claimant Testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for disqualifying job-related misconduct. Benefits are denied.

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 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

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.

Iowa Admin. Code r.871-24.32(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.

Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. The issue is not whether the employer made a correct decision in separating claimant, 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee*, 616 N.W.2d at 665.

It is the duty of the administrative law judge, as the trier of fact, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find the employer's version of events to be more credible than the claimant's recollection of those events. Claimant's testimony regarding the events of November 26, 2018 was inconsistent. Three coworkers and a resident reported claimant's actions on November 26, 2018; claimant provides no reason why these individuals would make false statements to employer. Furthermore, claimant received two verbal warnings and a written warning regarding the proper way to transfer residents in her seven months of employment; however, claimant alleges she had no reason to believe that her job was in jeopardy.

Claimant's actions of failing to use a gait belt, making an undignified remark about a resident and taking a blanket from a resident are violations of the employer's policies and the residents' rights set forth in the employee handbook. Claimant received several warnings regarding the proper way to transfer residents, knows how to use a gait belt and understands the importance of using the gait belt to transfer residents. However, claimant transferred a resident without using the gait belt, risking both her and the resident's safety. Claimant's actions of November 26, 2018 are a current act of substantial misconduct. Claimant knew or should have known that her job was in jeopardy. Claimant was discharged for disqualifying, job-related misconduct. Benefits are denied.

DECISION:

The December 21, 2018 (reference 01) unemployment insurance decision is affirmed. Benefits are denied until such time as the claimant works in and has been paid wages for insured work equal to ten times claimant's weekly benefit amount.

Adrienne C. Williamson
Administrative Law Judge
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Decision Dated and Mailed

acw/rvs