

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NATASHA D CANADA
Claimant

APPEAL 17A-UI-06249-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRAL IOWA HOSPITAL CORP
Employer

**OC: 09/25/16
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 7, 2017, (reference 07) unemployment insurance decision that denied benefits based upon her discharge for falsifying her application for hire. The parties were properly notified of the hearing. A telephone hearing was held on July 6, 2017. The claimant participated and testified. The employer participated through Human Resource Business Partner Kari Buckalew. Employer's Exhibits 1 through 3 were received into evidence.

ISSUE:

Was the claimant discharged for 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 food service hostess from November 22, 2016, until this employment ended on April 13, 2017, when she was discharged.

On April 7, 2017, claimant informed her supervisor that she was experiencing some pain in her back and ankle. Claimant further disclosed to the supervisor that she had seen a doctor, who concluded she had loose screws in a plate in her ankle. The screws and plate were placed in claimant's ankle following an injury in 1999. Prior to claimant being hired she was required to fill out a medical history questionnaire. The questionnaire asks about any prior back strain or injury and about any prior ankle surgeries. These questions are located in a section of the questionnaire asking more than 50 questions about various injuries or diagnosis in 12 separate areas of the body. On her questionnaire claimant drew a line through the "No" boxes on all of the questions. (Exhibit 3). On page two of the same questionnaire, the applicant is asked if they have ever had any work-related injuries. Claimant marked the "Yes" box for this question, though no one with the employer followed up with her regarding this answer.

A meeting was held with claimant on April 13, 2017 to ask about her questionnaire answers. During this meeting claimant admitted she had ankle surgery in 1999 and had strained her back

in 2016. When asked why she did not report this information on her questionnaire claimant stated she did not read it carefully and did not know why she marked "No." (Exhibit 2). During the hearing claimant testified she was so excited about being hired that she quickly filled out the paperwork without thoroughly reviewing it and was not intentionally trying to withhold information from the employer. Claimant further testified she was honest about her prior medical issues when specifically asked about them. Claimant was subsequently discharged for providing inaccurate information on the questionnaire.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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). 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). 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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. 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 conduct for which claimant was discharged was an isolated incident of poor judgment. Claimant provided credible testimony that she did not deliberately intend to deceive the employer, but failed to thoroughly read the document she was filling out. While it is certainly good practice to carefully read any document one is signing, the employer has failed to show claimant's conduct in this case was anything more than one incident of carelessness. "[M]ere negligence is not enough to constitute misconduct." *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 666 (Iowa 2000). A claimant will not be disqualified if the employer shows only "inadvertencies or ordinary negligence in isolated instances." 871 IAC 24.32(1)(a). Claimant was careless, but the carelessness does not indicate "such degree of recurrence as to manifest equal culpability, wrongful intent or evil design" such that it could accurately be called misconduct. Iowa Admin. Code r. 871-24.32(1)(a); *Greenwell v. Emp't Appeal Bd.*, No. 15-0154 (Iowa Ct. App. Mar. 23, 2016). The employer has not provided any evidence to indicate claimant's conduct was deliberate. Ordinary negligence is all that is proven here. Because the employer has failed to establish disqualifying misconduct, benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The June 7, 2017, (reference 07) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs