

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PATIENCE ZULU
Claimant

HELPING HANDS NURSING SOLUTIONS
Employer

APPEAL 22A-UI-03338-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/11/21
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

On January 24, 2022, the claimant filed an appeal from the January 20, 2022, (reference 05) unemployment insurance decision that denied benefits based on a determination that the claimant voluntarily quit her employment on December 1, 2021. The parties were properly notified about the hearing. A telephone hearing was held on March 8, 2022. Claimant, Patience Zulu, participated and testified. Employer did not call the toll-free number listed on the notice of hearing and did not participate. The administrative law judge took official notice of the administrative record.

ISSUES:

Was the claimant discharged from employment for disqualifying job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on January, 2020. Claimant last worked as a full-time CNA. Claimant was separated from employment on December 1, 2021, when her employer stopped scheduling her for jobs. The claimant testified that her sudden removal from the schedule was due to her inability to be vaccinated against Covid-19. The claimant was pregnant and had previously requested and received a medical exemption due to a high-risk pregnancy.

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, 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).

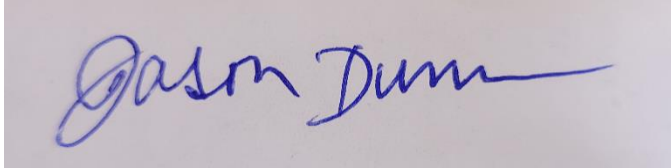
Misconduct "must be substantial" to justify the denial of unemployment benefits. *Lee*, 616 N.W.2d at 665 (citation omitted). "Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." *Id.* (citation omitted). ...the definition of misconduct requires more than a "disregard" it requires a "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." Iowa Admin. Code r. 871-24.32(1)(a) (emphasis added).

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 employer failed to meet its burden in proving job disqualifying misconduct. Benefits are allowed.

DECISION:

The January 20, 2022, (reference 05) 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.



Jason Dunn
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March 25, 2022
Decision Dated and Mailed

jd/mh