

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SUSAN B FRAZIER
Claimant

APPEAL 15A-UI-10664-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BROADLAWNS MEDICAL CENTER
Employer

**OC: 08/23/15
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 14, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination she was discharged for engaging in conduct that was not in the best interest of her employer. The parties were properly notified about the hearing. A telephone hearing was held on October 7, 2015. Claimant Susan Frazier participated on her own behalf. Witness Eva Sparks participated on the claimant's behalf. Employer Broadlawns Medical Center participated through Vice President of Human Resources Julie Kilgore, Nursing Director of Emergency and Trauma Jeff Jarding, and Chief Nursing Officer Susan Kirsten. Employer's Exhibit 1 was received.

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: The claimant was employed full time as a staff nurse beginning February 19, 2007, and was separated from employment on August 11, 2015, when she was discharged. One of the laws that govern the employer's business is the Emergency Medical Treatment and Active Labor Act (EMTALA), which includes a provision that every person seeking medical treatment in the emergency room will have a medical screening completed by a doctor. The employer has established policies and guidance to ensure it is complying with the EMTALA requirements.

On August 10, 2015, a male patient and his female family member reported to the employer's Emergency Room while the claimant was working. He was reporting with pain due to an ingrown toe nail. As it was a non-emergency issue and a busy night, it was taking some time for the patient to be seen. The family member was being difficult. The claimant took the family member and patient into a room to be seen by the doctor. An argument ensued when the claimant asked them why they were there as there was nothing the emergency room could do for them. The family member ended up running out of the room to find a doctor. Eventually, the two left without being seen by a doctor. When the couple attempted to return that evening, the

claimant blocked them from entering to receive care. The House Supervisor Paula Gedgood intervened to deescalate the situation and reassigned the patient to another nurse.

The patient and family member reported the lack of care they received from the claimant. Gedgood reported it the situation to Nursing Director of Emergency and Trauma Jeff Jarding, who conducted an investigation into the situation. He viewed the video from that evening and observed the claimant standing in the doorway with her arms crossed and pointing her finger at the patient and his family member. He also spoke with other employees who were present that evening. Jarding determined the claimant had denied the patient access to a medical screening in violation of EMTALA and the employer's policies.

The claimant had previously been warned for similar conduct. On January 14, 2015, she was issued a "Memorandum of Understanding" as she had denied care to a patient who had a restraining order against one of the other employees. Jarding communicated to her that an initial screening needed to be done as a patient seeking services could not be turned away and they would just ensure that the other employee did not interact with the patient. (Employer's Exhibit 1.) On May 5, 2015, the claimant was given a "Written Disciplinary Notice" for delaying patient care. The claimant did not assist another nurse who requested assistance multiple times, which the claimant heard, but to which she did not respond. She was told any further deficiencies could result in further disciplinary action including termination. (*Id.*)

Based on the events of August 10, 2015 and the claimant's continued performance deficiencies related to patient care, the employer made the decision to terminate the claimant's employment.

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. Benefits are denied.

Iowa Code § 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.

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 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). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995).

The claimant argued she did not deny the patient care on the evening of August 10, 2015. She explained when she was standing in the doorway, the patient was already in the room and she was only blocking his family member. Jarding testified he reviewed the video and saw the claimant blocking both the patient and his family member, denying the patient access to care. It is the duty of the administrative law judge as the trier of fact in this case, 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 believable evidence; 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.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds Jarding's version of events to be more credible.

Workers in the medical or dependent care profession, reasonably have a higher standard of care required in the performance of their job duties. That duty is evident by special licensing requirements. The claimant is required to provide patient care and all patients are to be allowed a medical screening by a doctor if they report to the Emergency Room. The claimant did not act in the best interest of the employer when she denied care to a patient. Additionally, she had been warned about the same behavior on two previous occasions. The employer has met the

burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Accordingly, benefits are denied.

DECISION:

The September 14, 2015, (reference 01) unemployment insurance 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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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