

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**KARI J EHLE**  
Claimant

**UNITED HEALTHCARE SERVICES INC**  
Employer

**APPEAL NO. 18A-UI-10676-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/16/18  
Claimant: Appellant (2)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated October 17, 2018, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on November 9, 2018. Claimant participated personally and with attorney Dana DeSimone. Employer participated by hearing representative Bettie Buchanan and witness Jill Halverson.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on September 13, 2018. Employer discharged claimant on September 13, 2018 because claimant had allegedly not sought a signature of a member when the member's contract was changed, in violation of company policies.

Claimant worked as a case manager focusing on medical code waivers for employer. Throughout claimant's term of approximately nine months of employment, she had difficulties properly filling out documentation as required. Claimant was twice placed on performance improvement plans by employer for failing to properly fill out forms and failing to stay in proper contact with members.

Prior to claimant being placed on a second performance improvement plan, claimant had allegedly improperly changed a member's plan without the member's signature in early August. Employer found out about this in early September. Employer stated that they confronted claimant through a phone call on September 7, and during the call, claimant denied doing what employer alleged. Claimant stated that she never spoke with employer regarding this allegation.

Employer stated that at no time during claimant's employment was claimant able to effectively do her job.

### **REASONING AND CONCLUSIONS OF LAW:**

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).

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.

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code

§ 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Henry* supra. In contrast, 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 deemed misconduct within the meaning of the statute. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers*, 462 N.W.2d at 737. The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. Claimant certainly had received multiple warnings about her inability to properly follow procedures, although none of the warnings concerned the last, most recent alleged action, which led to claimant's termination. Employer argues that claimant should have known immediately that she could not have altered a member's plan without getting a signature. Employer did not show any company documentation laying out procedures to be followed in altering a member's plan. Employer did not show document – with appropriate redactions – to prove up the allegations made of claimant's last, most recent action. Employer stated that she shared the specific information with claimant on September 7, 2018, but there was no documentation of this conversation brought forth either. Claimant stated that this conversation did not occur, and that the hearing was the first time she'd been informed of the last incident that led to her termination.

Employer stated that claimant had never been able to competently do her job. Claimant did state that in the most recent performance improvement plan, she had successfully completed each of the required actions. Employer did not dispute this. Employer did not advise claimant that her action, which was allegedly done prior to the most recent performance improvement

plan was one for which she would be terminated if she'd ever done that action again, although employer did an investigation into claimant's action and found that there was no fraud.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning obtaining signatures of members prior to changing of policy coverage's. Claimant was not warned concerning this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because claimant had not been warned of the action and was not shown to have intentionally done the misdeeds. Additionally, employer did not show that claimant was ever able to competently do her job. Therefore, said inability is not misconduct. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated October 17, 2018, reference 02, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

bab/scn