

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**SERIFA DONALDSON**  
Claimant

**BCP MEDIAPOLIS LLC**  
Employer

**APPEAL 20A-UI-06270-J1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/16/20**  
**Claimant: APPELLANT (1)**

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

**STATEMENT OF THE CASE:**

On June 18, 2020, the claimant filed an appeal from the June 16, 2020, (reference 08) unemployment insurance decision that denied benefits based on violation of a company rule. The parties were properly notified about the hearing. A telephone hearing was held on July 20 and July 21, 2020. Claimant participated. Employer participated and was represented by Hallie Kurth.

**ISSUE:**

Did claimant commit 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 1, 2020. Claimant last worked as a full-time CNA. Claimant was separated from employment on February 17, 2020 for violation of an employer's safety policy.

Lisa O'Hara, Director of Nursing, testified claimant was terminated because she moved a patient by herself at the nursing home, using a Hoyer Lift. The employer has a policy that two persons are required to operate the Hoyer Lift, due to safety concerns. Claimant was provided a copy of this policy and was aware of this policy. Claimant was aware of this policy.

On February 3, 2020, Tabathia Fulton, RN went into a room of a resident that claimant was put into bed. The claimant was the CNA in attendance in the room. The patient was immobile and had to be moved via a Hoyer Lift. The use of the lift was required and noted on the patient care plan, which all staff must follow. Claimant was aware of the patients care plan. Ms. Fulton asked the other CNAs, Shelby Steffener and Michelle Gierloff, if they had helped claimant put the patient in bed. They told Ms. Fulton they did not help the claimant. They also testified that they did not put the patient into bed. The claimant did not offer any explanation as to how the patient got into bed on February 13, 2020. At the hearing on July 20, 2020 claimant testified that the two CNAs put the patient in bed and she was just rolling the patient in bed to change his cloths. Claimant had not offered this explanation before.

Claimant had received a counseling concerning her attendance on January 20, 2020. On February 10, 2020 claimant received a written warning about violating resident's right, which was a final warning. Claimant was terminated for the safety violation that occurred on February 13, 2020 on February 17, 2020.

Claimant denied that she had moved the patient into bed. Claimant said that the two other CNAs but the claimant in his bed. Claimant could offer no explanation as to why the two CNAs denied they put the patient in bed. Claimant said that she was terminated based upon false information and in repose to a complaint she made about a co-employer. Claimant was informed by another co-employer that at third co-employee had made a statement that she was, "Going to beat her N\*\*\*\*\* ass.". Claimant reported this to Ms. O'Hara on February 6, 2020.

On February 3, 2020 Ms. O'Hara was informed that an employee made the above statement about the claimant. On February 4, 2020, Ms. O'Hara investigated the incident and determined the statement had been made. The employee who made the statement was given a written warning. On February 6, 2020 Ms. O'Hara informed claimant that she had taken action against the employee that had made the statement.

#### **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).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

The convincing evidence is that claimant did not follow the employer's policy of having two persons operate the Hoyer Lift. I find the employer has met the burden of proof to show job related misconduct. The employer had used a progressive disciplinary policy with claimant and claimant was at the last step. The lifting of the patient by herself was in violation of company policy and could have endanger the patient.

## **DECISION:**

### **Regular Unemployment Insurance Benefits Under State Law**

The June 16, 2020, (reference 08) unemployment insurance decision is affirmed. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

### **Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act**

Even though claimant is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. This decision does not address when claimant is eligible for PUA. For a decision on such eligibility, claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

**NOTE TO CLAIMANT:**

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information about how to apply for PUA, go to:

<https://www.iowaworkforcedevelopment.gov/pua-informatio>



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James F. Elliott  
Administrative Law Judge

July 28, 2020  
Decision Dated and Mailed

je/scn