

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**AUDRIE L BATES**  
Claimant

**COVENANT MEDICAL CENTER INC**  
Employer

**APPEAL 15A-UI-11223-CL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/13/15**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 5, 2015, (reference 01) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A telephone hearing was held on October 22, 2015. Claimant participated. Employer participated through senior human resources representative, Deborah Tyler and hospital patient account manager, Cheryl McGourty.

**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 patient account representative from May 5, 2014, and was separated from employment on September 17, 2015, when she was terminated.

The grandfather of claimant's significant other passed away. Claimant requested bereavement leave to attend a funeral. Claimant's supervisor, Cheryl McGourty, asked claimant to identify her relationship with the deceased. Claimant stated it was her grandfather. Under employer's bereavement leave policy, employer provides employees with three days of paid leave for the death of an immediate family member. Employees are required to use paid time off to attend the funeral of anyone other than an immediately family member. The policy's definition of an immediate family member includes a grandparent, but not the grandparent of a spouse or significant other. The policy requires employees to submit documentation to their supervisor upon return from bereavement leave. Claimant was aware of the policy. Claimant told McGourty it was her grandfather who passed away because she did not have enough paid time off available to attend the funeral. Claimant did not ask McGourty if she could use unpaid time to attend the funeral. Instead, she lied about her relationship with the deceased.

Claimant was absent from work and on bereavement leave on September 9, 10, and 11, 2015.

Claimant returned to work on September 14, 2015, and presented a funeral program to McGourty. The program claimant presented to McGourty had not actually been used at the funeral. It was a fake program that was created by claimant's family member. The program was on cardstock and contained a number of spelling errors. The program looked suspicious to McGourty. McGourty found the obituary for the deceased online and noticed that claimant's name was not included in the online obituary, but was on the program she provided. McGourty questioned claimant about the discrepancies, but claimant confirmed it was her grandfather who passed away. Upon being questioned again, claimant admitted it was not her grandfather who passed away—it was the grandfather of her significant other.

On September 17, 2015, employer terminated claimant for misuse, falsification, or improper use of timekeeping records. Employer could not trust claimant to deal with the sensitive issues involving Medicare after learning she lied and falsified documents in order to take paid bereavement leave.

#### **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.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* 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). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Here, employer established claimant was terminated for conduct that was in deliberate disregard of employer's interests. Claimant's actions violated the standards of behavior that any employer has a right to expect from its employees. This is misconduct without prior warning or specific policy violation.

**DECISION:**

The October 5, 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.

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Decision Dated and Mailed

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