

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANNABELLE H WOLTMAN
Claimant

WELLS ENTERPRISES INC
Employer

APPEAL 16A-UI-06036-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/27/15
Claimant: Appellant (2)

Section 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 25, 2016, (reference 04) unemployment insurance decision that denied benefits based upon her discharge for falsifying an application for hire. The parties were properly notified of the hearing. A telephone hearing was held on June 30, 2016. The claimant, Annabelle Woltman, participated and was represented by attorney, Mary Hamilton. The employer, Wells Enterprises, participated through hearing representative, Alyce Smolsky, and human resource generalist, David Anderson.

ISSUE:

Was 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 line helper from November 9, 2015, until this employment ended on May 9, 2016, when she was discharged.

The employer requires all employees, upon being offered a position, to complete a post-offer job physical. The purpose of the physical is to capture any medical history that may lead to problems for the employee in performing their job duties. One of the questions on the physical asks if employees have ever suffered a work-related injury or received worker's compensation benefits. Claimant answered the question in the negative.

On May 3, 2016, claimant went to see the onsite nurse, complaining of issues with her hand. Claimant told the nurse she had experienced a similar issue back in 2007 when working for a different employer and was sent to the doctor. The nurse pulled claimant's file and noticed that she had indicated she had no prior work-related injuries or worker's compensation claims. The nurse reported her findings to human resources, who then concluded claimant had been dishonest. The employer met with claimant on May 9 and notified that she was being discharged for what they believed was a dishonest statement on her post-offer physical.

During the hearing claimant testified that, at the time she filled out the physical, she had completely forgotten about her prior hand issue, as it occurred back in 2007. Claimant explained she was experiencing some numbness at work, that her former employer sent her to the doctor, that the doctor put her on light duty, and that she had no issues after that. Claimant never filed a worker's compensation claim and never claimed or was told that the issue with her hand was work related.

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 § 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).

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.

Claimant was discharged for allegedly falsifying her post-offer physical. Claimant provided credible testimony that at the time she was filling out the physical she had forgotten about a minor issue with her hand occurring nearly ten years prior. The employer did not provide any evidence showing claimant deliberately omitted this information. Furthermore, the employer testified that the question asks about any work-related injuries or worker's compensation claims. There was no evidence presented that this issue was work related or that claimant has ever filed a worker's compensation claim. Claimant denied ever filing a worker's compensation claim or being told the injury was work related. Accordingly, even if claimant had remembered her prior hand issue, her negative answer to the question would have still been truthful. Inasmuch as employer has not shown claimant was deliberately dishonest on her post-offer physical, it has not met the burden of proof to establish that she acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning.

DECISION:

The May 25, 2016, (reference 04) 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.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/pjs