

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TYRONE E WRIGHT
Claimant

NEURO REHABCARE WATERLOO LLC
Employer

APPEAL 22A-UI-01167-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/07/21
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a - Discharge for Misconduct
Iowa Code § 96.5(1) - Voluntary Quit
Iowa Admin. Code r. 871-24.32(1)a - Discharge for Misconduct
Iowa Admin. Code r. 871-24.1(113)c - Discharge for Violation of Rules

STATEMENT OF THE CASE:

Claimant/appellant, Tyrone Wright, filed an appeal from the December 9, 2021, (reference 01) unemployment insurance decision that denied benefits, finding he was discharged 09/17/21 for violation of a known company rule. After proper notice, a telephone hearing was conducted on February 3, 2022. Claimant participated personally. Employer, Neuro Rehabcare of Waterloo, LLC, participated through, Andrea Krueger, human resources generalist and party representative, Lydnsey Taylor, human resources business partner, and Leeamme Yearling, program director. Judicial notice was taken of the administrative records. Employer's Exhibits were admitted and consisted of nine pages.

ISSUE:

Was the separation a layoff, discharged for misconduct or voluntarily quit without good cause?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence and record, the undersigned finds:

Claimant was employed part-time as a direct service professional with a varied schedule. He started on November 18, 2020. His last day worked was August 22, 2021. Claimant was suspended without pay on August 22, 2021. The suspension was to investigate potential misconduct. Claimant was discharged for misconduct (violation of workplace rules) on August 26, 2021, for an incident on August 22, 2021.

Employer has an employee handbook. Claimant received access to an electronic copy when he started employment and he acknowledged receipt on November 23, 2020. Policy 502 addresses Safety and requiring the reporting of unsafe conditions at work. Policy 701 addresses Employee Conduct and Work Rules, prohibits unsatisfactory performance/conduct as well as violating safety/health rules.

Employer is a senior residential care facility. On August 22, 2021, a resident was observed smoking marijuana and was impaired. This resident stated that claimant provided them with the marijuana. Another resident gave a statement of observing the other resident smoking marijuana. Claimant was suspended August 22 for an investigation into the matter. Claimant was talked with and denied giving the resident any marijuana. Claimant did acknowledge he was aware this resident smoked marijuana at the employer's place of business and has seen them do so a number of different occasions.

Claimant's knowing that a resident possessed and used marijuana on the employer's premises is something that claimant should have reported to his supervisor so the matter could be addressed. He failed to do so. The resident smoking marijuana on the employer's property is an "unsafe condition" that claimant knew of and failed to report. An elderly resident being impaired is a safety issue for themselves and for others.

Claimant had previous disciplinary action taken. May 20, 2021, he received a final warning for unsatisfactory work performance, insubordination, safety, and affordable care act compliance issues. Claimant was instructed to assist a resident with emptying their catheter on May 19, but failed to do so, with the catheter still needing emptied on May 20, all in violation of workplace rules.

March 22, 2021, claimant was insubordinate for failing to follow direct instructions to empty the trash from his manager's office, after having prior discipline over this issue, in violation of workplace rules. This resulted in an April 1, 2021 written warning for insubordination and unsatisfactory performance/conduct.

From November 18, 2020 through March 12, 2021, claimant failed to ensure to all offices had their trash emptied, especially his manager's office, on multiple occasions, which resulted in claimant being directed to ensure that he does on multiple occasions, as it is part of his duties. The most recent violation was March 12, 2021, leading to a March 22, 2021 written warning.

Due to the final warning and the other prior discipline, claimant knew his job was in jeopardy.

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 section 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.

871 IAC 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 Department of Job Service*, 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). 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). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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). 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).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.*

The employer is entitled to establish reasonable work rules and expect employees to abide by them. 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. An employer has a "right to expect decency and civility from its employees." *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 738 (Iowa Ct. App. 1990).

The decision in this case rests, at least in part, on the credibility of the witnesses. 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, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events.

As addressed in fact finding, claimant was aware of an unsafe condition (resident using marijuana at the employer's facility) and failed to report the unsafe condition, which violates workplace rules of not reporting unsafe conditions and unsatisfactory performance.

The employer has presented substantial and credible evidence that claimant violated workplace rules that he was aware of and knew his job was in jeopardy for other discipline. This is disqualifying misconduct. Benefits are denied.

DECISION:

The December 9, 2021, (reference 01) unemployment insurance decision that denied benefits is **AFFIRMED**. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



Darrin T. Hamilton
Administrative Law Judge

March 31, 2022
Decision Dated and Mailed

dh/scn