

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

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**TALISA M HALEY**

Claimant

and

**GREAT RIVER MEDICAL CENTER**

Employer

**HEARING NUMBER: 20BIWDUI-0068**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

**A REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION:** 96.5-2-A, 96.5-1

**DECISION**

**UNEMPLOYMENT BENEFITS ARE DENIED**

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

The Claimant, Talisa Haley, worked for Great River Medical Center from September 12, 2016 through March 11, 2020 as a full-time scheduler. She worked Monday through Friday, 8:00 a.m. until 5:00 p.m. The Claimant was responsible for answering calls from patients, obtaining their information, and then forwarding the call to the appropriate provider. The Employer has a specific protocol for handling patient calls. If a provider is away from the office, the Claimant is to find out which provider is on-call, and forward the call accordingly. As a back-up, the Claimant is also required to copy the on-call referral to the nurse on duty to ensure the patient gets responded to in a timely manner. In addition, if the call has an acute message (requiring immediate assistance), the Claimant is to send the message to whoever is available for that day and copy it to Amber, who would then make sure the patient got a quick response.

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On May 13, 2019, the Claimant received a documented counseling for failing to follow protocol. She was not answering calls as they came in; frequently left her desk for long periods without notice to anyone; and spent a lot of time on her cell phone. She received written counseling on June 21, 2019 for failing to follow phone protocol; not taking care of patients; and spending too much time with certain patients. The Employer issued a written warning for attendance issues on September 17, 2019.

On November 11, 2019, the Employer observed the Claimant sleeping, and when she was awake, she didn't answer calls. She was issued a final written warning that if her performance did not improve, she would be terminated.

On February 19, 2020, the Claimant took information from an acute patient who had experienced dull headaches for the past two weeks, along with diarrhea for the past two days. The Claimant forwarded this acute message to a medical record, sent it to a provider and nurse who were out of the office that day. She did not forward the message to the on-call provider and Amber so they could respond in a timely manner. The Employer, again, verbally warned her about using the appropriate protocol. The Employer also reviewed the protocol policy with her, which she acknowledged she understood. A similar incident occurred on March 3, 2020 wherein the Claimant did not refer a patient (who was having elevated blood pressure issues) to a nurse as requested. The Employer held a meeting with the Claimant on March 6, 2020 to discuss her two recent incidents. The Claimant did not deny her errors; she explained she got busy and was unable to get to all calls. After consideration, the Employer decided to terminate Claimant on March 11, 2020 for repeatedly failing to follow the correct protocol for caring for patients.

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

Iowa Code Section 96.5(2)(a) (2019) provides:

*Discharge for Misconduct.* If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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.

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The Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665, (Iowa 2000) (quoting Reigelsberger v. Employment Appeal Board, 500 N.W.2d 64, 66 (Iowa 1993)).

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 Department of Job Service, 321 N.W.2d 6 (Iowa 1982). 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. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 NW2d 661 (Iowa 2000).

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Employer's version of events. The record establishes the Claimant had knowledge and understood the Employer's protocol procedures for handling patients over the phone. At the Claimant's third warning (February 19th) about failing to comply with protocol, she received re-training and acknowledged she knew what was required of her. Her continued failure to comply demonstrated a pattern of "...carelessness or negligence of such degree of recurrence as to manifest equal culpability...or [shows] an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer..." The Claimant's explanation that she got busy and was unable to properly attend to calls is unacceptable given the nature of her employment. Her failure to follow protocol could not only result in harm to the patients, namely, the acute patients who call in, it could also subject the Employer to liability, all of which is contrary to the Employer's interests.

Based on this record, the Employer was not wholly unjustified in terminating the Claimant for repeated failures to follow protocol after repeated warnings. For this reason, we conclude the Employer has satisfied their burden of proof.

#### **DECISION:**

The administrative law judge's decision dated May 11, 2020 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for disqualifying misconduct until such time she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. See, Iowa Code section 96.5(2)"a".

**Note to Claimant:** This decision determines you are not eligible for regular unemployment insurance benefits. This decision will become final unless an application for rehearing, or a petition to district court is filed as set out above. In addition, individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations may still qualify for Pandemic Unemployment Assistance (PUA). You will need to apply

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for PUA to determine your eligibility under the program. Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

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Ashley R. Koopmans

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James M. Strohman

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Myron R. Linn

AMG/fnv