IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

KALEA PADILLA Claimant **MEDIREVV INC.** Employer	**APPEAL 21A-UI-09227-AR-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 05/03/20** **Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On April 1, 2021, claimant, Kalea Padilla, filed an appeal from the March 30, 2021, reference 03, unemployment insurance decision that denied benefits based upon the determination that the employer, Medirevv, Inc., discharged her for violation of a known company rule. The parties were properly notified about the hearing held by telephone on June 7, 2021. The claimant participated personally. The employer participated through HR Business Partner Stacey Spillman.

ISSUE:

Did the employer discharge the claimant for job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a patient experience representative beginning on September 30, 2019, and was separated from employment on February 17, 2021, when she was discharged.

The employer maintains a policy wherein patient experience representatives may only hang up on patients who are persistently rude despite requests that they change their conduct. Hanging up on patients is otherwise forbidden.

Claimant had been having difficulty with her computer system in the months leading to her discharge. As she was taking patient calls, her computer would experience an error, and claimant could not get to the screens she needed to assist patients. By the time she got back to the necessary screens, the patient was often no longer on the phone. These errors resulted in what appeared to be claimant hanging up on patients. She had reported this issue to her supervisor most recently in January 2021.

Claimant was also on a final warning for productivity and quality assurance beginning in November 2020. The warning indicated that she would have a follow up meeting to discuss her

progress on the areas identified as needing improvement, but the meeting never happened. In January 2021, claimant had a performance evaluation with her supervisor in which claimant was told that her performance had improved and to "keep up the good work."

On February 17, 2021, claimant had been locked out of her computer system earlier in the day. She received a call from Operations Manager Mitch Brennan, which she assumed had to do with the system lock out issue. Instead, he informed claimant that she was being terminated. She later received a letter from the employer which gave the reason for termination as hanging up on patients.

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

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning.

While the parties agree that claimant had warnings regarding her performance in the past, it appears that the warnings cited only production and quality assurance matters, and not specifically patient hang ups. Furthermore, the last warning claimant received about any issue was in November 2020, nearly three months before her termination, making it remote in time as compared to the termination. Finally, the last feedback claimant received from her supervisor in January 2021 indicated that she had made improvements and was doing good work. Claimant was also credible when she asserted that at least some of what appeared to be hang ups were in fact computer errors. There is little alleged that suggests claimant had reasonable warning that her job may be in jeopardy based on the patient hang up issue. As such, the employer has not demonstrated that claimant acted deliberately or with recurrent negligence suggesting a disregard for the interests of the employer. It has not established that claimant engaged in disqualifying job-related misconduct.

DECISION:

The March 30, 2021, (reference 03) 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.

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Alexis D. Rowe
Administrative Law Judge

June 21, 2021
Decision Dated and Mailed

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