

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANGELA L BRONES

Claimant

**VERA FRENCH COMMUNITY MENTAL
HEALTH**

Employer

APPEAL 20A-UI-10948-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/17/20

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant/appellant, Angela L. Brones, filed an appeal from the August 25, 2020 (reference 01) unemployment insurance decision that denied benefits. After proper notice, a telephone hearing was conducted on October 27, 2020. Claimant participated personally. Employer participated through Shelly Chapman. Official notice was taken of the administrative records. Employer Exhibits A-D were admitted.

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: The employer provides care and medication management for individuals with chronic mental illness.

The claimant was employed full-time as a direct support supervisor and was separated from employment on May 21, 2020 when she was discharged.

Claimant began employment in 2016. Claimant was trained on employer rules and procedures at the time of hire. Claimant was also responsible for enforcing policies amongst her subordinates. Prior to discharge, claimant had no prior warnings, and in fact, had received a positive performance review just a few months prior to discharge. Employer discharged claimant based upon an anonymous complaint and subsequent investigation.

Employer determined from its investigation that on May 20, 2020, claimant improperly switched shifts and did not seek permission from the on-call supervisor, which led to a lack of coverage. Employer said this incident was compounded by claimant's conduct on May 6, 2020, when she reportedly left with two employees in a company vehicle to get dinner, leaving clients unattended, and failed to properly document for the shift.

Employer also reported claimant had inappropriately accessed and shared information about a promoted employee without permission.

Claimant's job description does provide for scheduling of staff and ensuring coverage (Employer Exhibit D). Claimant testified she had notified Morgan, the on-call supervisor, of the change and there had been multiple changes to on-call procedures in the weeks leading to her discharge. Claimant also stated the reason she did not document, was that she was helping a subordinate with her documentation that day (in terms of what to write, how to explain behaviors) and that "double documentation" was not permitted. Claimant did acknowledge going in a company vehicle for dinner, but that it was not for her dinner, but rather with three clients, which was allowed, as they are permitted to go out socially.

Claimant acknowledged knowing about the promotion but denied accessing the information improperly to learn of it, and denied sharing it when asked about who the employee was. She was subsequently discharged.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

"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).

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. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for a good cause. *Woods v. Iowa Dep't of Job Serv.* 327 N.W.2d 768, 771 (Iowa 1982). Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

In this case, claimant performed work for employer since 2016 and had no warnings prior to discharge. Claimant had most recently received a positive performance review in the weeks prior to discharge. Employer discharged claimant based upon an anonymous complaint which alleged claimant acted improperly on at least four occasions as it related to scheduling, documentation, use of an agency car and release of confidential employee information. Claimant provided a reasonable explanation for her conduct for each incident. Employer presented no first-hand witness to claimant's conduct or evidence of deliberate intent to violate employer rules and procedures. Based on the evidence presented, employer did not present sufficient details and evidence to corroborate its allegation of misconduct.

The question before the administrative law judge in this case is not whether the employer has the right to discharge this employee, but whether the claimant's discharge is disqualifying under the provisions of the Iowa Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above stated reasons, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing that the claimant's discharge was due to a final or current act of job related misconduct. Accordingly, benefits are allowed provided the claimant is otherwise eligible.

DECISION:

The August 25, 2020, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The benefits claimed and withheld shall be paid, provided she is otherwise eligible.



Jennifer L. Beckman
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October 29, 2020

Decision Dated and Mailed

jlb/sam