

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WILLIAM K DENNING
Claimant

CENTRAL IOWA HOSPITAL CORP
Employer

APPEAL 18A-UI-06133-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/06/18
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 30, 2018, (reference 02), unemployment insurance decision that denied benefits based upon a discharge from employment. After due notice was issued, a telephone conference hearing was held on June 20, 2018. Claimant participated. Employer participated through human resources business partner Kendra Steuhm. Employer's Exhibit 1 was received.

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 claimant was employed as a full-time registered nurse. The separation date was May 7, 2018. His last day of work was May 2, 2018. On that date, he was interviewing a nine-year-old's mother who brought him to the behavioral health unit for examination because he had been hitting her. During the interview the child was out of control and began hitting his mother. Claimant, who had been instructed to protect patients, family members and staff, picked up the child by his upper arms and raised him in the air enough to place him on the hospital bed. He did not hold the child on the bed but let go as soon as the child was seated. The child jumped down saying, "You can't catch me" but said nothing about discomfort or pain. The patient's mother said, "Thank you. See, this is what he does." Claimant had similarly intervened, while in the past in the presence of supervisors, who said nothing. When claimant left the room, coworker RN Jane Fleming commented that she thought he was too rough. RN Tammy Bennett was not in the area at the time. Claimant does not recall a security officer in the area. Nurse practitioner was in the area but said nothing. Claimant's supervisor since January 2018, RN Brenda McDonald, was not present at the time so claimant self-reported the incident. McDonald also interviewed others.¹ The room had video monitoring but it is not recorded. The employer's policy requires protection of patients from abuse and warns of immediate termination

¹ None of the named witnesses to the incident participated at hearing, nor were their statements offered. McDonald did not participate at hearing and her investigation interview notes were not provided.

without warning. (Employer's Exhibit 1 p. 17) The employer had not previously warned claimant his job was in jeopardy for any similar reasons.

REASONING AND CONCLUSIONS OF LAW:

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

When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. Iowa Dep't Human Servs.*, 461 N.W.2d 603, 607 (Iowa Ct. App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14(1). In making the evaluation, the fact-finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608.

The decision in this case rests, at least in part, upon the credibility of the parties. The employer did not present a witness or witness statement with direct knowledge of the situation. Noting that the claimant presented direct, first-hand testimony while the employer relied upon second-hand reports, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer.

Iowa Code section 96.5(2)a provides:

Causes for disqualification.

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

Misconduct "must be substantial" to justify the denial of unemployment benefits. *Lee*, 616 N.W.2d at 665 (citation omitted). "Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." *Id.* (citation omitted). ...the definition of misconduct requires more than a "disregard" it requires a "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." Iowa Admin. Code r. 871-24.32(1)(a) (emphasis added).

Iowa Admin. Code r. 871-24.32(4) provides, in pertinent part:

(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.

Whether an employee violated an employer's policies is a different issue from whether the employee is disqualified for misconduct for purposes of unemployment insurance benefits. See *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000) ("Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." (Quoting *Reigelsberger*, 500 N.W.2d at 66.)).

Claimant adequately rebutted the employer's allegations and the employer has not met its burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning.

DECISION:

The May 30, 2018, (reference 02) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs