

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

CARMEN A THOMAS
Claimant

APPEAL NO. 17A-UI-12776-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PINNACLE HEALTH FACILITIES XVII
Employer

OC: 11/05/17
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Pinnacle Health Facilities XVII (employer) appealed a representative's December 4, 2017, decision (reference 04) that concluded Carmen Thomas (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 5, 2018. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Jennifer Menke. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 12, 2017 as a full-time registered nurse. The employer has a handbook but there is no indication the claimant signed for receipt of it. The handbook states, "If the employee refuses to sign the warning, such refusal must be noted in the space for the employee's signature on the Employee Disciplinary Report".

On October 12, 2017, the employer issued the claimant a coaching for leaving crushed medications on top of the medication cart. The employer notified the claimant that further infractions could result in termination from employment.

On October 23, 2017, the employer created an Employee Counseling/Disciplinary Report regarding the claimant. It was labeled as a first written warning. It was not signed by the claimant and there was no indication on the document that the claimant refused to sign the report. The document did not list anything the claimant did wrong. The claimant was not issued the report.

On October 31, 2017, the employer created another Employee Counseling/Disciplinary Report regarding the claimant. It was also labeled as a first written warning. It was not signed by the

claimant and there was no indication on the document the claimant refused to sign the report. Again, this document did not list anything the claimant did wrong. A man in the parking lot was playing music loudly. The man was the claimant's boyfriend. The employer said something to the claimant about the music but did not issue the claimant the document.

On November 1, 2017, the employer created a third Employee Counseling/Disciplinary Report regarding the claimant. It was labeled as a second written warning. It was not signed by the claimant and there was no indication on the document that the claimant refused to sign the report. The document stated that a resident's family member told a nurse and the nurse told the director of nursing that the claimant left medications for the resident in front of the resident. The claimant was not issued this document.

On November 3, 2017, the employer called the claimant on her day off and asked her to come in for a meeting. The claimant told the employer she was unable to do so. The employer terminated the claimant over the telephone for having "3 write ups in 90 days".

The claimant filed for unemployment insurance benefits with an effective date of November 5, 2017. The employer participated personally at the fact finding interview on December 1, 2017, by Courtney Currie.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

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 disqualification shall continue 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 Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as the employer had not previously warned the claimant about any of the issues leading to the separation, it has not met the burden of proof to establish the claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer created warnings but did not take the next step and issue the warnings. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's December 4, 2017, decision (reference 04) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs