

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**LISA M URBANEK**  
Claimant

**CARE INITIATIVES**  
Employer

**APPEAL 19A-UI-01195-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/30/18  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the January 29, 2019, (reference 01) representative decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 26, 2019. Claimant participated along with her witness Gina Wendell, assistant director of nursing for the employer. Employer opted not to participate. Claimant's Exhibit A was admitted into the record.

**ISSUE:**

Was the claimant discharged due to job connected misconduct sufficient to disqualify her from receipt of unemployment insurance benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a licensed practical nurse at a skilled nursing facility beginning on May 3, 2017 through January 3, 2019, when she was discharged.

On December 22, the claimant saw some paperwork on a desk that led her to believe the employer was going to hire SB. The claimant had knowledge of SB's employment history as well as her prior drug history. Claimant sent a text to Administrator Amy Castro sharing the information with her. Claimant was warning management about hiring a person she thought would not be appropriate to work in a skilled nursing facility. Ms. Castro immediately texted the claimant back and accused her of spreading false rumors. Claimant denied spreading rumors. Ms. Castro told the claimant to stop texting her and she did. All of the information the claimant provided to Ms. Castro about SB was true and accurate.

On December 27, the claimant sent a text to Joy Cox, the director of nursing. She asked Ms. Cox whether SB was being hired as CNA or a CMA. Ms. Cox told the claimant she did not know if SB had even been hired. The claimant then texted Ms. Cox that she did not want to put her nursing license on the line for a known "meth user/seller." Ms. Cox did not respond.

Sometime after her text conversation with Ms. Cox the claimant was speaking to Gina Wendel, the assistant director of nursing about another issue when she brought up SB being hired by the facility. The claimant expressed her concerns about SB working at the facility and Ms. Wendel agreed. Ms. Wendel believed the claimant to be telling her the truth about what she knew about SB and that she was not spreading any malicious rumors, but was trying to warn management as to a potential employee's background.

The claimant did not speak to any other employees about SB. The claimant only expressed what she knew to be true to members of management that made hiring decisions. The claimant was never told not to discuss what she knew with anyone else. The claimant's exhibits establish that the claimant provided true and accurate information about SB to the employer. The claimant's motive was simply to avoid having an inappropriate person working for the facility.

In July 2018, the claimant received a perfect performance evaluation with each category marked as superior. The claimant had never been warned or disciplined prior to this incident for any conduct or behavior.

On January 3, the claimant was called into an early morning meeting at 6:30 a.m. with Ms. Castro and Ms. Cox. She was told that she was being suspended for making false and malicious statements about another employee. The claimant denied the allegations and indicated she had not made any false allegations. At no time did the claimant yell during the meeting nor was she belligerent toward Ms. Castro. The claimant had not texted anyone in contravention to Ms. Castro's instruction. Ms. Castro then began asking the claimant if she was going to resign. The claimant told her she was not resigning. Ms. Castro kept repeating her question over and over to the claimant asking if she was going to resign. When the claimant kept repeating she was not quitting, Ms. Castro finally told her she was fired.

SB was not hired by the employer.

#### **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 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). 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." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

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, employer incurs potential liability for unemployment insurance benefits related to that separation.

The employer has not established any misconduct on the part of the claimant. The claimant went to management with her concerns about a potential employee. Everything the claimant told management was true and accurate. Claimant did not spread any rumors and only spoke to management about her concerns. The claimant was motivated to protect her own nursing license, and to insure that only appropriate people were hired by the employer. As the employer has not established any misconduct on the part of the claimant, no disqualification is imposed. Benefits are allowed provided the claimant is otherwise eligible.

**DECISION:**

The January 29, 2019, (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/rvs