

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SHELBY M PETER**  
Claimant

**CATHOLIC HEALTH INITIATIVES**  
Employer

**APPEAL 21A-UI-05866-JC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/13/20**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant/appellant, Shelby M. Peter, filed an appeal from the February 9, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 28, 2021. The claimant participated. The employer did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing.

The administrative law judge took official notice of the administrative records. Claimant Exhibit A was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Did claimant voluntarily quit the employment with good cause attributable to employer?

**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 lab assistant, working 32 hour per week, and was separated from employment on December 2, 2020, when she was discharged.

Claimant was trained on employer rules and procedures at the time of hire. Claimant had no prior warnings and was unaware her job was in jeopardy. Claimant was discharged based upon an incident that occurred on November 20, 2020.

Claimant worked overnight shifts, which began at 9:00 p.m. and ended the following morning. Claimant’s immediate supervisor was not on site during her shifts. At the time of the final incident, claimant was breastfeeding, and would pump three times per shift. On November 20, 2020, when claimant arrived to her shift, her co-worker stated she had not been feeling well and

told claimant to be prepared to work that night. When claimant reminded the co-worker she would need to take breaks to pump, a disagreement ensued. The co-worker told claimant she could not take breaks and that she had “done this to yourself”, which really upset the claimant. Claimant called her manager and explained what was going on. She asked him intervene and his response was that the words said by the co-worker didn’t sound like her. Claimant said she was uncomfortable working with the co-worker and needed help so they could work with each other. Claimant told her manager she would go home for the night and he said “don’t threaten me.” Claimant was concerned and stressed that she would be unable to pump that night, and clocked out approximately 30 minutes after her shift started.

Claimant called the director and explained what happened. Claimant also requested to talk to human resources because it was not the first incident involving her pumping. The employer agreed to have a meeting with human resources the next day but it was cancelled. Approximately two weeks later, claimant went to work and was informed employer was having a meeting with her. She thought it was to discuss her concerns previously raised with human resources. Instead, the employer discharged her.

### **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).

The administrative law judge does not condone claimant leaving work without permission, but recognizes she made a reasonable attempt to contact her manager after being harassed for breastfeeding/needing to pump at work. Given the employer’s lack of support in response to her call and lack disciplinary history, the administrative law judge concludes the claimant’s absence without permission on November 20, 2020 was an isolated instance of poor judgment. Inasmuch as the employer had not previously warned the claimant about the issue leading to the separation, it has not met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. 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. Training or general notice to staff about a policy is not considered a disciplinary 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 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 job-related misconduct. Accordingly, benefits are allowed provided the claimant is otherwise eligible.

The parties are reminded that under Iowa Code § 96.6-4, a finding of fact or law, judgment, conclusion, or final order made in an unemployment insurance proceeding is binding only on the parties in this proceeding and is not binding in any other agency or judicial proceeding. This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise.

**DECISION:**

The unemployment insurance decision dated February 9, 2021, (reference 01) is REVERSED.

*Jennifer L. Beckman*

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May 4, 2021

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Decision Dated and Mailed

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