

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHEILA R HOODJER
Claimant

APPEAL 18A-UI-00079-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHAUTAUQUA GUEST HOME
Employer

**OC: 11/26/17
Claimant: Appellant (2)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant/appellant filed a timely appeal from the December 18, 2017 (reference 01) unemployment insurance decision that disallowed benefits to the claimant based upon her discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on January 25, 2018. The claimant, Sheila R. Hoodjer, participated personally. Lucas Hoodjer testified as a witness on behalf of claimant. The employer, Chautauqua Guest Home, participated through witnesses Ginger Schmidt, Mary Shupe and Kathy Cerwinske. Terri Jones was present on behalf of employer but did not testify. Employer's Exhibits 1 – 3 were admitted.

ISSUES:

Did the claimant file a timely appeal?
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:

A decision finding that claimant was denied benefits was mailed to claimant's last known address of record on or about December 18, 2017 (reference 01). Claimant did not receive the decision in the mail. Claimant only learned about the decision when she contacted her local Iowa Workforce Development ("IWD") office and was told she needed to file an appeal. To date, she has never received a copy of the decision denying her benefits. Claimant filed her appeal on January 2, 2018.

Claimant was employed full-time as a licensed professional nurse ("LPN") and charge nurse. Claimant's job duties included supervising other nurse and medication aides, assisting patients, passing out medication and conducting assessments. Claimant was employed from April 20, 2012 until November 28, 2017. Claimant's immediate supervisor was Ginger Schmidt.

Employer has a written employee handbook, which claimant received a copy of. See Exhibit 1. The handbook states “[i]f it becomes necessary for you to leave your duties or the facility premises during working hours, permission must be obtained from the charge nurse or your Department Head prior to leaving.” See Exhibit 1.

Claimant was able to receive permission to leave from the other charge nurse on duty. She had done this on approximately ten other occasions during her employment, without disciplinary repercussions.

On November 20, 2017, claimant attended a mandatory work meeting. Following the meeting, another nurse on duty, Peggy, asked her to cover her shift while she attended to a family member who was admitted to the emergency room. Claimant agreed to do so.

During this shift, claimant met with Ms. Schmidt because she had learned her hours were being decreased on the schedule. Ms. Schmidt told claimant that her behaviors needed improving and that is why her hours were decreased on the schedule. Claimant had received previous discipline for violating the employer’s cell phone policy and had just returned from a suspension. This conversation with Ms. Schmidt was upsetting to claimant and she was crying and overwhelmed at work.

After claimant met with Ms. Schmidt, she and the other charge nurse on duty, Missy, learned that Peggy had taken the keys to the medication cart with her when she left. Claimant obtained permission from Missy to go to the emergency room and get the keys from Peggy. Claimant attempted to find Peggy but she was not at the emergency room. Claimant telephoned Missy and told her that Peggy was not at the emergency room. Claimant then obtained permission from Missy to go home for the rest of the shift because she was still upset from the conversation she had with Ms. Schmidt about the reduction in her hours. Missy, the other charge nurse on duty, gave claimant permission to leave. On November 28, 2017, claimant was discharged for leaving her shift early on November 20, 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant’s appeal was timely and claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

The first issue is whether the claimant filed a timely appeal. The administrative law judge finds that the claimant did file a timely appeal.

Iowa Code § 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence

showing that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 1, paragraphs “a” through “h”. Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.

An appeal must be filed within ten days after notification of that decision was mailed. Iowa Code § 96.6(2). The Iowa Supreme Court held that compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979).

Iowa Admin. Code r. 871-24.35(1) provides:

Date of submission and extension of time for payments and notices.

(1) Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

a. If transmitted via the United States postal service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

b. If transmitted by any means other than the United States postal service on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or

other action of the United States postal service, the division shall issue an appealable decision to the interested party.

The claimant has shown good cause for failure to comply with the jurisdictional time limit to file an appeal because she never received a copy of the decision denying her benefits. This delay or other action of the United States Postal Service establishes good cause for her late appeal filing. Iowa Admin. Code r. 871-24.35(2).

Therefore, the next issue is whether the separation from employment disqualifies claimant from receipt of unemployment insurance benefits. As a preliminary matter, I find that Claimant did not quit. Claimant was discharged from employment.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

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. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). 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 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. 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. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Further, poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

The reason claimant was discharged was for her alleged failure to obtain permission to leave her work shift on November 20, 2017. Claimant did receive permission from Missy, charge nurse, to leave her shift that day. The plain language of the policy states that an employee must obtain permission from a charge nurse or Department Head in order to leave during working hours. There is nothing in the policy that required claimant to obtain permission from Ms. Schmidt rather than Missy. As such, claimant clearly complied with the employer's policy. If the employer expects charge nurses to obtain permission to leave from only their direct supervisor or Department Head, the employer has the ability write the policy as such. It did not require that in this case. There was no policy violation. As such, the employer has failed to

prove that claimant was discharged for any current act of job-related misconduct that would disqualify her from receiving benefits. Benefits are allowed.

DECISION:

The claimant filed a timely appeal. The December 18, 2017 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs