

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALANDRIA DAVISON**  
Claimant

**APPEAL NO: 16R-UI-06327-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 10/11/15**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the April 6, 2016, reference 03, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 24, 2016. The claimant participated in the hearing. Maria Malog-McDaniel, DON; Lois Zakerolhosseine, Nurse Manager; and Jacqueline Jones, Employer Representative; participated in the hearing on behalf of the employer. Employer's Exhibits One through Eight were admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected 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 third shift LPN/charge nurse for Care Initiatives from November 17, 2015 to March 17, 2016. She was discharged after she began suffering from a non-work-related medical condition and was restricted from performing the essential functions of her job.

In February 2016, the claimant was diagnosed with metatarsalgia in both feet which caused her great pain in the balls of her feet. Her treating physician excused her from work from March 3 through March 16, 2016. The employer attempted to contact the claimant three or four times prior to March 16, 2016, to discuss her return to work but the claimant did not respond to the calls until March 16, 2016. The employer told her she was on the schedule for the night of March 17, 2016, and the claimant stated she could not work because of her health condition. The employer asked the claimant if she had a medical excuse regarding her restrictions and the claimant said she was going to see her physician March 17, 2016 and would bring a note after that appointment. On March 17, 2016, the claimant provided the employer a note permanently restricting her from walking or standing for a prolonged period. As an LPN/charge nurse the claimant was required to walk and stand the majority of her shift and the essential functions of her job included performing assessments involving going into resident's rooms and taking vital signs; attending to resident needs; assessments after a resident falls; medication passes; PRN

medication passes; answering call lights; counting the controlled substances; and assisting CNAs with transfers or repositioning residents. The employer told the claimant it would let her know the status of her employment. The employer called the claimant approximately one hour after she left the facility, notified her it could not accommodate her restrictions, and her employment was terminated.

### **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 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).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. 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 Board, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant could not perform the essential functions of her job due to a medical condition diagnosed by her treating physician. That was the only reason cited by the employer for the claimant's termination of employment. Because inability to perform the job due to a medical condition is not volitional or intentional, the claimant's actions cannot be considered misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

**DECISION:**

The April 6, 2016, reference 03, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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