

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

TINA M FLINT
Claimant

APPEAL NO. 18A-UI-06765-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HCI VNS CARE SERVICES
Employer

OC: 05/20/18
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Tina Flint (claimant) appealed a representative's June 19, 2018, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with HCI VNS Care Services (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 11, 2018. The claimant participated personally. The employer was represented by Thomas Kuiper, Hearings Representative, and participated by Beverly Fischer, Team Director; Jessie Riesberg, Human Resources Business Partner; and Stacy Jobs, Executive Director. The employer offered and Exhibit 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 November 8, 2016, as a full-time hospice team assistant. The claimant signed the employer's electronic handbook at some point.

On May 9, 2018, the employer met with the claimant to discuss Certificates of Terminal Illness (CTI). The hospice executive director wanted to know why they were not being processed in a timely manner. The claimant explained that she could not create the CTI until the nurse completed the admission and synchronized the data. The hospice executive director learned the process and did not issue the claimant any warning.

On May 16, 2018, the employer issued the claimant a written warning for not following procedures, being scattered, forgetting things, lack of accuracy, misfiling paperwork, and lack of attention to detail. The employer noted, "Tina does not seem to retain what she learns or she doesn't understand her role fully".

On May 16, 2018, a billing person discovered that an admission nurse did not obtain a signature on a consent document in May 2018. The employer talked to the nurse about her omission.

The claimant would have reviewed the documents before they were sent to the billing person. She did not notice the signature was missing. On May 18, 2018, the employer terminated the claimant for poor performance.

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). 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).

The employer discharged the claimant for poor work performance and has the burden of proof to show evidence of intent. The employer did not provide any evidence of intent at the hearing. It believes the claimant was careless in performing her work. The employer believed the claimant did not intend to make mistakes and was unable to improve. Consequently 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 June 19, 2018, decision (reference 01) is reversed. 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