

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DON L DREESMAN**  
Claimant

**APPEAL 16A-UI-07418-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALLEN MEMORIAL HOSPITAL**  
Employer

**OC: 08/16/15**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the July 1, 2016 (reference 02) unemployment insurance decision that denied benefits based upon his discharge from employment for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on July 25, 2016. The claimant, Don L. Dreesman, participated personally. The employer, Allen Memorial Hospital, participated through Human Resources Manager Aaron Wedo.

**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: Claimant was employed full time as Certified Nurse Assistant from September 28, 2015 until his employment ended on June 7, 2016. Claimant's job duties included assisting nurses in caring for residents in the long term care facility. Claimant was responsible for assisting with dressing the residents, helping them with meals and feeding, bathing and other daily living activities.

On June 3, 2016 claimant was caring for a resident in the cafeteria. Claimant was assisting this resident with eating. The resident had a care plan in place where she was not able to be left alone and was to be at the nurse's station while awake. The resident finished eating and claimant walked to the nurse's station to have another co-worker transport the resident from the cafeteria. Claimant was unable to push this resident's wheelchair because he had a medical work restriction in place from his physician. Claimant did not have a radio to call someone for help. No one else was in the cafeteria at the time.

Claimant asked one of the two nurse's aides who were sitting at the station to transport the resident. No verbal response was received to claimant's request; however, one of the two nurse's aides stood up and began walking toward the cafeteria. Claimant assumed that the

aide was going to transport the resident. Claimant then walked in the other direction to finish his job duties.

The nurse's aide did not go to the cafeteria to transport the resident. The employer learned that the resident had been left alone when claimant's supervisor saw the resident sitting alone. Another co-worker had also emailed the claimant's supervisor to report that the resident had been left alone.

The employer has a progressive disciplinary policy and the employees are subject to immediate discharge once they reach four disciplinary incidents. This was the fourth disciplinary incident for claimant. Claimant would not have been discharged if this had not been claimant's fourth disciplinary incident. Claimant received previous written discipline on October 27, 2015; December 17, 2015; and May 17, 2016.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed.

As a preliminary matter, I find that the Claimant did not quit. Claimant was discharged from employment.

Iowa Code section 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.

871 IAC 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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the 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.

871 IAC 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.

Further, 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). 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).

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). 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).

Claimant's behavior on June 3, 2016 does not rise to the level of misconduct. 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). There is no evidence that the claimant's actions had any wrongful intent. Claimant believed that the nurse was walking to the cafeteria to assist the resident. Even though the nurse did not respond verbally to his request she did respond non-verbally by walking towards the cafeteria. It was reasonable for claimant to assume that the resident was not going to be left alone for any significant period of time. Mr. Wedo testified that claimant was not discharged for going to the nurse's station for help but for leaving the resident unattended for a significant period of time. Claimant did not intend that the resident would be left alone for a significant period of time.

Reoccurring acts of negligence by an employee would probably be described by most employers as in disregard of their interests. *Greenwell v Emp't Appeal Bd.*, No. 15-0154 (Iowa Ct. App. March 23, 2016). The misconduct legal standard requires more than reoccurring acts of negligence in disregard of the employer's interests. *Id.* Further, a claimant's poor work performance does not disqualify her from receiving benefits. Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon*, 275 N.W.2d at 448 (Iowa 1979).

The employer failed to meet its burden of proof in establishing disqualifying job misconduct. As such, benefits are allowed.

**DECISION:**

The July 1, 2016, (reference 02) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The benefits claimed and withheld shall be paid, provided he is otherwise eligible.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

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