

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHERRI L ENGEL
Claimant

MARY GREELEY MEDICAL CENTER
Employer

APPEAL 19A-UI-07588-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 08/25/19
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

Employer/appellant filed an appeal from the September 20, 2019 (reference 01) unemployment insurance decision that allowed benefits. A hearing was scheduled in this matter for October 17, 2019. The hearing was rescheduled at claimant's request for discovery purposes. The parties were properly notified of the hearing. A telephone hearing was held on November 4, 2019, at 11:00 a.m. Claimant participated. Employer participated through Jo-el Sprecher, Director of Medical Surgery and Nursing Support Team. Claimant's Exhibits A – D were admitted. Employer's Exhibits 1 – 6 were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant's separation was a discharge due to disqualifying job-related misconduct.
Whether claimant was overpaid benefits.
Whether claimant should repay those benefits and/or whether employer should be charged due to its participation in the fact-finding interview.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time patient care technician with the nursing support team from July 24, 1997 until her employment with Mary Greeley Medical Center ended on August 29, 2019. (Sprecher Testimony) Claimant worked Monday through Wednesday from 7:00 p.m. until 7:30 a.m. (Sprecher Testimony) Claimant's direct supervisor was Jo-el Sprecher, Director of Medical Surgery and Nursing Support Team. (Sprecher Testimony)

On August 19, 2019, claimant was assigned to sit with a patient one-on-one for her work shift. (Sprecher Testimony) Claimant told the assigning nurse that there was no way claimant would sit with the patient one-on-one for claimant's entire shift. (Sprecher Testimony) Claimant did not raise her voice, use profanity or call the nurse names during this interaction. (Sprecher Testimony) Claimant sat with the patient one-on-one as assigned. (Sprecher Testimony) The

nurse reported the incident to employer because the nurse did not appreciate how claimant communicated with her (i.e. claimant's tone of voice). (Sprecher Testimony)

Also on August 19, 2019, claimant reported to nurse that a psychiatric assistant was not checking on a patient every 15 minutes as required and 45 to 50 minutes elapsed between assistant's checks. (Sprecher Testimony; Claimant Testimony) Claimant followed the chain of command in reporting her concerns to the nurse. (Claimant Testimony) In reporting the assistant's conduct, claimant was concerned for patient safety and was not acting out of malice for the assistant. (Claimant Testimony; Sprecher Testimony) The nurse investigated and determined that the assistant had checked on the patient every 15 minutes. (Sprecher Testimony)

On August 20, 2019, the two incidents were reported to employer. (Sprecher Testimony) On August 29, 2019, employer discharged claimant for violation of employer's code of conduct by being disrespectful and filing a false complaint. (Sprecher Testimony) Claimant had no prior warnings for filing a false complaint. (Sprecher Testimony) Claimant received a warning in March 2018 for disrespectful behavior. (Exhibit 3)

The administrative record reflects that claimant filed an original claim with an effective date of August 25, 2019 and has filed for and has received unemployment insurance benefits in the gross amount of \$3,280.00 for benefit weeks ending August 31, 2019 through October 26, 2019. Employer participated in the fact-finding interview through Jo-el Sprecher. (Sprecher Testimony)

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.

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 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). 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).

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.

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. 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). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). However, "balky and argumentative" conduct is not necessarily disqualifying. *Endicott v. Iowa Dept. of Job Service*, 367 N.W.2d 300, 303 (Iowa Ct. App. 1985)(citation omitted).

The final incidents upon which employer relied to discharge claimant were not substantial acts of misconduct. Claimant was balky and argumentative with a nurse; however, she did not use profanity, raise her voice or call the nurse names. Claimant was not insubordinate; she completed the assignment about which she was complaining. Claimant also raised a concern about a coworker performing the required patient checks. Claimant did not knowingly or intentionally file a false claim. Claimant did not report her coworker's actions out of malice, but out of a concern for patient safety and wellbeing. Employer has not met its burden of proving a current act of misconduct; therefore, any past incidents of misconduct by claimant need not be examined. Employer has not met its burden of proving disqualifying, job-related misconduct. Claimant was discharged for no disqualifying reason. Benefits are allowed, provided claimant is

otherwise eligible. Because claimant's separation was not disqualifying, the issues of overpayment, repayment and chargeability are moot.

DECISION:

The September 20, 2019 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. The issues of overpayment, repayment and chargeability are moot.

Adrienne C. Williamson
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Decision Dated and Mailed

acw/scn