

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALEXANDRIA KOHN

Claimant

APPEAL 20R-UI-11464-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SIOUXLAND ADULT MEDICINE

Employer

OC: 03/08/20

Claimant: Respondent (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct

Iowa Code § 96.5-1 - Voluntary Quit

Iowa Code § 96.3-7 – Overpayment

PL 116-136 Section 2104 (B) – Federal Pandemic Unemployment Compensation

871 IAC 24.10 – Employer Participation in the Fact-Finding Interview

STATEMENT OF THE CASE:

Siouxland Adult Medicine (employer) appealed a representative's June 16, 2020, decision (reference 02) that concluded Alexandria Kohn (claimant) was eligible to receive unemployment insurance benefits. Administrative Law Judge Dawn Boucher issued a decision on August 7, 2020, affirming the representative's decision. The Employment Appeal Board issued a decision of remand on September 14, 2020. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 12, 2020. The claimant participated personally. The employer participated by Mark Carlson, Medical Director; Deborah Carlson, Office Manager; and Sheila Wilson, Front Desk Receptionist. The administrative law judge took official notice of the administrative file.

ISSUES:

The issues include whether the claimant was separated from employment for any disqualifying reason, whether the claimant was overpaid benefits, which party should be charged for those benefits, and whether the claimant is eligible for Federal Pandemic Unemployment Compensation.

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 February 6, 2019, as a full-time nurse practitioner. The employer had a handbook but did not give one to the claimant until she requested one in her last month of employment. The employer did not issue the claimant any warnings during her employment. It talked to her about issues but did not warn her that her behavior could result in further disciplinary action.

In August 2019, the billing encoder in the office notified the claimant she was not credentialed properly for billing purposes. The claimant was seeing patients without having the proper

credentials through Medicare and Medicaid. Her documenting and processing patient encounters without the credentials could jeopardize her license. The claimant spoke with the owner/doctor about the issue. The owner/doctor said the office had always done it that way and that way made it more money.

The office had two physicians. The claimant realized that she had seen a number of patients when neither doctor was physically present in the office. She expressed her concerns to the owner/doctor that her license would be in jeopardy if she completed documentation without the proper credentials to see patients alone through Medicare and Medicaid. There were rules about whether non-physician practitioners could see patients and perform services with the physician on site, not on site, or in the same room. He told the claimant to complete the paperwork, put it on his desk, and he would submit it for authorization. The claimant did so and waited.

The owner/doctor did not find the claimant's paperwork and did not mention this to the claimant. He did not think she should worry about her license. The office manager (the wife of the owner/doctor) and the owner/doctor told the claimant to complete the documentation without the authorization. The documentation had grown to over four-hundred cases. Someone told the owner/doctor the claimant's paperwork was found in a trashcan. The owner/doctor did not mention this to the claimant and he never applied for credentials.

On March 12, 2020, the employer sent the claimant home. On March 13, 2020, the employer terminated the claimant for failure to document and process the more than four-hundred patient encounters without the proper credentials through Medicare and Medicaid.

The employer participated personally at the fact-finding interview on May 21, 2020, by Deborah Carlson and Mark Carlson.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was 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).

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.

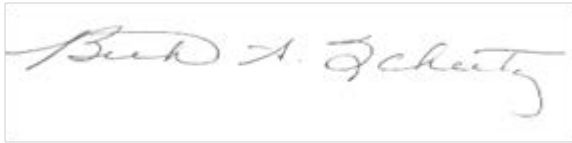
The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation.

Inasmuch as the employer had not previously warned the claimant about any of the issues leading to the separation, it has not met the burden of proof to establish the claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given.

The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa App. 1985). The employer terminated the claimant for not documenting and processing patient encounters. The claimant refused to perform the task until the employer provided the claimant with the proper documentation. Her reason for refusal was reasonable because following the employer's instructions could jeopardize her license and it would not cause the employer harm to obtain the authorization. The employer's request was unreasonable. It did not meet its burden of proof to show misconduct. Benefits are allowed provided the claimant is otherwise eligible.

DECISION:

The representative's June 16, 2020 decision (reference 02) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

A rectangular box containing a handwritten signature in cursive script, which reads "Beth A. Scheetz".

Beth A. Scheetz
Administrative Law Judge

November 18, 2020
Decision Dated and Mailed

bas/scn