

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FEKIJA OPRASIC
Claimant

APPEAL NO. 07A-UI-02173-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 01-07-07 R: 03
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 23, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 17, 2007. The claimant did participate through the interpretation of Zijo Suceska and was represented by Adnan Mahmutagic, Attorney at Law. The employer did participate through Robert High, Administrator, and was represented by Alyce Smolsky of TALX UC eXpress. Claimant's Exhibit A was received.

ISSUE:

Was the claimant discharged for work related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a housekeeper full time beginning August 28, 2001 through January 3, 2007, when she was discharged.

The claimant was discharged on January 3, 2007, after she was off work for a non-work-related injury. The claimant last worked for the employer on July 19, 2006, when she attended an employee meeting for which she was paid.

She last worked as a housekeeper on May 22, 2006. The claimant was sent home on May 22, 2006, because the employer would not accommodate her work restrictions from her physician. The claimant had work restrictions because she was in a car accident on February 28, 2006. The employer does not accommodate non-work-related work restrictions. Because the employer considered the claimant's work restrictions related to a non-work-related injury, her position was eliminated on January 3, 2007. The claimant kept the employer informed of her work restrictions and her medical treatment during the entire period she was off work.

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 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.

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). The employer discharged the claimant and has the burden of proof to show misconduct. 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 claimant had work restrictions which were due to a non-work-related injury. The claimant was able to work within her work restrictions. The fact that she had work restrictions due to a non-work-related injury cannot be found to be work-related misconduct. The claimant was discharged only because she had work restrictions that the employer chose not to accommodate, not for any other reason. The employer's evidence does not establish that the claimant deliberately and intentionally acted in a manner she knew to be contrary to the

employer's interests or standards. There was no wanton or willful disregard of the employer's standards. In short, substantial misconduct has not been established by the evidence. Inasmuch as the employer has not established a current or final act of misconduct, benefits are allowed.

DECISION:

The February 23, 2007, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw