

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA J GALLUP
Claimant

APPEAL NO: 14A-UI-13486-D

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALANIZ LLC
Employer

OC: 12/07/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Jessica J. Gallup (claimant) appealed a representative's December 26, 2014 (reference 02) decision that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Alaniz, L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on March 27, 2015. The claimant participated in the hearing and was represented by Steven Ort, attorney at law. The employer participated by Mike Owens. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Reversed. Benefits would be allowed if otherwise eligible.

FINDINGS OF FACT:

The claimant started working for the employer on June 6, 2011. She worked full time as an overnight machine operator at the employer's direct mail marketing business. Her last day of work was the night of November 19 into the morning of November 20, 2014. The employer discharged her on November 20, 2014. The reason asserted for the discharge was quality errors.

The claimant had received warnings on April 29, 2014 and November 10, 2014; these were due to quality issues but not the same type of issues. On the shift of November 15, the claimant was one of multiple employees on multiple shifts who did not catch an error in ensuring that a mailing had two inserts instead of one. However, the claimant had even spoken to her supervisor about the discrepancy and had been told that the work order was incorrect. As a result of her inclusion in the group that had worked on the project and because she had two prior warnings, the employer determined to discharge the claimant.

The administrative law judge notes that there was a representative's decision issued on January 9, 2015 (reference 01) which concluded that the claimant is not eligible to receive unemployment insurance benefits until August 1, 2015.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is her involvement in the final quality error. Misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. *Huntoon*, supra. There is no evidence the claimant intentionally failed to perform her duties to the best of her abilities. Under the circumstances of this case, the claimant's failure to successfully challenge the work order on November 15 was at worst the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, or was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's December 26, 2014 (reference 02) decision is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant would be qualified to receive unemployment insurance benefits, if he is otherwise eligible. Because of the other representative's decision, the claimant is not otherwise eligible until August 1, 2015.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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