

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**LORI A KELEHER**  
Claimant

**MID-STEP SERVICES INC**  
Employer

**APPEAL 15R-UI-11699-DL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/19/15**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 10, 2015, (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on November 4, 2015. Claimant participated and was represented by Jay Smith, Attorney at Law. Employer did not respond to the hearing notice instruction and did not participate.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a consumer work area coordinator from December 26, 1997, and was separated from employment on July 17, 2015, when she was discharged. On that date she was working with a consumer on a new exercise for which instructions were given two months prior when she was not at work. A form piece of paper had two columns with grocery items listed and she checked off three items in the first column and repeated the item names to the consumer three times because he could not read. She waited while he went around the corner to retrieve the items and gave him praise when he returned with the checked items. She then folded the paper in half so the second column was facing up and checked three more items, repeated the names to the consumer and sent him on his way. He returned frowning. Claimant's immediate supervisor, assistant work service director, Liz Jones, followed behind him with the list. She asked claimant, "Don't you know how to do your job?" and threw the list towards her. It landed on the floor so claimant bent down and picked it up. Jones said in the presence of the consumer, "I told you to give him a new list each time" and yelled, "If you can't run the program the right way then don't run it at all." Jones left so claimant tore the list in half and threw it in the garbage. Employees had been told to tear up or shred paper when done with it. Claimant was upset so she began crying. The consumer tried to comfort her and said he did not like Jones because "she is always mad." After consumers had left for the day work service director, Joellen Puttman, asked claimant if she ripped up the paper. Claimant admitted she had done so and was fired.

During an April 21 meeting Jones told claimant to keep two consumers in the work room and not let them leave. One male consumer needed to use the restroom so claimant allowed him to leave reminding him not to spend unnecessary time there. Jones saw him right away and yelled to claimant in front of other consumers and two assistants, "I told you not to let them leave the area no matter what. Don't you listen?" Jones turned him around and had him return and sit down. Claimant had just had consumer rights training so a bit later she escorted him to the restroom, he used it and they returned promptly. Jones alone confronted her on April 28 and wanted her to sign a disciplinary form. Claimant told her she was being "ridiculous" and tore the paper in half and said she wanted union representation. When he did not answer the phone she returned to work. On April 29 union representation was denied and the employer suspended claimant for tearing up the disciplinary form.

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

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

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 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.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. It seems the employer considered claimant tearing up the disciplinary form, and later the consumer's grocery list form, as insubordination. While the former may be considered such, the latter is not as it was mere disposal of the used list when Jones halted the exercise. The employer has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning.

**DECISION:**

The August 10, 2015, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs