IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

CAROL A MILLER
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AREA RESIDENTIAL CARE INC
1170 ROOSEVELT ST EXT
DUBUQUE IA 52001-1464

Appeal Number: 04A-UI-06548-L
OC: 05-16-04 R: 04
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

Employer filed a timely appeal from the June 4, 2004, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on July 13, 2004 in Dubuque, Iowa. Claimant did participate with Pauline Tonato and John Rosenthal, who also acted as claimant's representative. Employer did participate through Dara Fishnick, Kimberly Conolly and Linda Steinwand.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time community living instructor through May 20, 2004 when she was discharged. An April 30 investigation ended on May 19, 2004 in which employer alleged that claimant was aware of others, Brianne Trannel and Kristine Barton, getting into locked desk

drawers and files without authorization by picking the lock and that she did not report it to the employer. The non-confidential staff notebook log is kept on the desk or in the area to read.

Claimant knew there was staff spending a lot of time in the office at night but was unsure as to why. Claimant was working 16-hour days and had difficulty remembering the chronology of events. She did see Trannel reading a book. Trannel handed it to claimant after she was done and claimant observed her own name on it. When claimant asked, Trannel said Sarah, assistant supervisor, left it out on the desk. Claimant did not know where it came from and wrote down two quotes out of the book. She was humiliated, embarrassed and angry because she did not want her personal information available and believed it should have been locked in an inaccessible protected place. The first time claimant knew of the book or file cabinet problem was when Trannel handed her the book. Claimant told employer about the book during one of two meetings within a short period of time. She did not read any other material other than the book with her name on it. In those meetings she also advised employer of verbal attacks and vandalism at her home that she believed to be work-related and expressed her fear and stress. Upon appeal within the corporation of her discharge, John Romaine said she remained discharged but could reapply for work again when she had her psychiatrist's permission. There were no work restrictions in place.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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).

Claimant did not know that Brianne took the notebook or that the file lock was compromised and was unaware, until she looked at it, that the information was confidential. She did not seek the information but Brianne gave it to her without telling her where it came from, other than Sarah left it out, which would reasonably imply to claimant that the information was not confidential. Claimant was obviously a pawn played by at least two other actively involved employees apart from the outside harassment and threat to get her fired. Employer has not proved that claimant acted intentionally or deliberately against the employer's interests or policy. Because of the agreement that claimant may reapply for work at some future time, based upon her medical ability to work, employer's interest in claimant's separation seemed to be more related to claimant's health (in spite of no work restrictions) than the notebook or claimant's allegations of harassment. Benefits are allowed.

DECISION:

The June 4, 2004, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

dml/tjc