

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CYNTHIA K CAVALLARO
Claimant

APPEAL NO. 15A-UI-02730-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARVEYS IOWA MANAGEMENT CO INC
Employer

OC: 02/08/15
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated February 24, 2015, reference 01, which denied unemployment insurance benefits finding the claimant was discharged from work on February 10, 2015 for violation of a known company rule. After due notice was provided, a telephone hearing was held on April 6, 2015. Claimant participated. The employer was represented by Michelle Hawkins, Hearing Representative, and witnesses: Ms. Annette Grote, Human Resource Generalist, and Mr. Ryan McCabe, Hotel Manager.

ISSUE:

The issue is whether the claimant was discharged for intentional misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Cynthia Cavallaro was employed by the captioned employer as a hotel guest room attendant from July 4, 1996 until February 10, 2015 when she was discharged from employment. Ms. Cavallaro was employed on a full-time basis and was paid by the hour. Her immediate supervisor was Marie Miller.

Ms. Cavallaro was discharged on February 10, 2015 because of an incident that had taken place the preceding day, February 9, 2015. On that date the claimant was observed by the assistant hotel manager and by a security manager using the bathroom facilities in a guest room without closing either the bathroom door or the doorway to the hall. Company policy prohibits staff from using the bathroom facilities in guest rooms. Employees are expected to use the facilities that are provided for them by the company for bathroom needs. The employer also believed that the claimant's failure to close either the bathroom or the hallway door showed an extreme insensitivity on the part of the claimant and was in clear violation of the employer's standards of behavior. When questioned about the matter, Ms. Cavallaro at first denied she had been the person that had been observed but shortly thereafter recanted her denial and admitted she had been the person in the bathroom. The employer considered the claimant's

failure to close the doors and her untruthful statements about the matter to be a serious error in judgment and a management decision was made to terminate Ms. Cavallaro from her employment.

On February 9, 2015, Ms. Cavallaro's elderly mother passed away and although the claimant had been involved in caring for her mother, she nevertheless reported to work that day though she was upset about her mother's passing. Because of the circumstances that day, Ms. Cavallaro had requested permission to leave work early and permission had been granted. Prior to leaving Ms. Cavallaro busied herself with housekeeping duties.

Ms. Cavallaro, herself, called the hotel's assistant manager to inspect a room adjacent to the room Ms. Cavallaro was cleaning. The claimant who was upset and not feeling well was suddenly beset with diarrhea as she was on her hands and knees scrubbing the guest room bathroom's floor. Because of the urgency of the diarrhea's onset, and her location, the claimant quickly used the toilet that was near her to avoid further soiling herself. Due to the urgency of the situation the claimant did not take the time to, or did not notice whether the doors were open or closed.

Ms. Cavallaro was not aware that she had been seen by anyone in the hallway but thought perhaps the guests had momentarily returned to the room and may have observed her in the bathroom. When unexpectedly questioned about the matter the same day, Ms. Cavallaro at first denied the allegation because she was unsure that the employer was referring to her in regard to the open doors and because she continued to be upset at the loss of her mother and feared losing her job of 18 years. A few minutes later the claimant reconsidered and agreed that she had used the facilities in the guest room.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. It does not.

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).

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 issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Department of Job Service*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants the denial unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Department of Job Service*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not always serious enough to warrant a denial of unemployment insurance benefits. Such misconduct must be "substantial." When the conduct that causes the discharge is not intentional but based upon carelessness or situations that are largely beyond the claimant's control, the conduct of the employee 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).

In the case at hand, the evidence in the record establishes that the claimant was sick and grieving the loss of her mother that day but nevertheless reported for work and attempted to perform her duties. While doing so, the claimant was unexpectedly beset by a medical condition that required quick response. The emergency situation provided the claimant a reasonable explanation for both using the toilet in the guest room's bathroom and for failing to notice or close doors before doing so. The administrative law judge concludes that the claimant's initial failure to make an admission to the employer was caused by her diminished capacity because of the circumstances of the day and was more in the nature of an isolated instance of poor judgment in an otherwise unblemished employment record.

While the decision to terminate Ms. Cavallaro may have been a sound decision from a management viewpoint, for the above-stated reasons the administrative law judge concludes the evidence in the record does not establish intentional, disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated February 24, 2015, reference 01, is reversed. Claimant was discharged under non disqualifying conditions and is eligible to receive unemployment insurance benefits, providing that she meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs