IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

JESSICA L BARRY Claimant **SIMPLY ESSENTIALS LLC** Employer	**APPEAL 17A-UI-03956-JC-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 03/12/17** **Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 30, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 3, 2017. The claimant participated personally. The employer participated through Clint Richmond, human resources manager.

Claimant exhibits A through E and Employer exhibits 1 through 3 were received into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, 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 disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time beginning September 6, 2016 as a maintenance planner and was separated from employment on March 15, 2017, when she was discharged for insubordination (Employer exhibit 3).

At the time of the claimant's employment, the employer was starting up, and acknowledged many employees worked more than 40 hours per week, including the claimant. As part of the claimant's orientation, she received a company handbook, which stated type C policy violations, including insubordination, can result in suspension or immediate dismissal. The claimant had no prior warnings and unaware her job was in jeopardy.

The employer utilizes several thousands of dollars in equipment on its premises. If a piece of equipment broke, the employer would send it in to the manufacturer, would order a new piece but then submit a request for warrant dollars application, to be reimbursed for the defunct piece. The employer estimated that the applications can result in anywhere from $50 to thousands of dollars per application.

The claimant stated that during her employment, she never completed a warranty dollar application, and during her employment, Josh and Charlie, who were vendor representatives on site, had handled them. According to the employer, Greg Miller, the claimant's boss (who is no

longer employed with the employer and did not attend the hearing) asked the claimant on October 15 and again on December 20, 2016 to complete the outstanding warranty dollar applications (Employer exhibit 1). There was no indication that a deadline was given to the claimant to complete the applications.

Then on March 15, 2017, the claimant was approached unexpectedly by Mr. Miller about whether the warranty dollars applications were complete. The claimant stated no, and indicated she was overwhelmed with other duties. Text messages between the claimant and Mr. Miller reflect that during employment, the claimant was repeatedly asked and complied with personal requests for Mr. Miller including ordering him lunch, making a stop at McDonalds for sausage biscuits and grape jelly and handling car repair discussions (Claimant exhibit D). She was subsequently discharged (Employer exhibit 3).

REASONING AND CONCLUSIONS OF LAW:

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

An employee who is terminated for misconduct is disqualified from receiving unemployment benefits. Iowa Code § 96.5(2)(a). Misconduct for this purpose 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. Iowa Admin. Code r. 871–24.32(1)(a).

This definition has been held to "accurately reflect[ ] the intent of the legislature." *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).
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. Misconduct "must be substantial" to justify the denial of unemployment benefits. *Lee*, 616 N.W.2d at 665 (citation omitted). "Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." *Id.* (citation omitted).

When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. Iowa Dep't Human Servs.*, 461 N.W.2d 603, 607 (Iowa Ct. App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14 (1). In making the evaluation, the fact-finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. In this case, the claimant was discharged for a failure to timely complete warranty dollar applications, to reimburse the employer for defunct parts. The evidence presented however, does not show that the claimant was ever given a deadline for completion, nor was she sufficiently placed on notice that a failure to do so would result in her discharge. Rather, the claimant was overworked, working long hours, (including performing personal errands for her manager, Greg Miller), and had previously understood the vendors on site to handle the applications. Mr. Miller did not attend the hearing, and the employer did not present any credible evidence to support that the claimant willfully or deliberately ignored a directive by Mr. Miller. Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Based on the evidence presented, the administrative law judge concludes that the conduct for which the claimant was discharged was at most an isolated incident of poor judgment and inasmuch as the employer had not previously warned the claimant about the issue leading to the separation, it has not met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. While the claimant's conduct might well have justified her termination, the employer has failed to meet its burden of proof establishing disqualifying job misconduct in order to deny benefits. As such, benefits are allowed.

Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading separation was misconduct under Iowa law.

DECISION:

The March 30, 2017, (reference 01) unemployment insurance decision is reversed. The 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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Jennifer L. Beckman
Administrative Law Judge

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Decision Dated and Mailed

jlb/rvs