

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TANISHA D BLAKLEY
Claimant

APPEAL 18A-UI-11896-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEABOARD FOODS SERVICES INC
Employer

**OC: 11/04/18
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the November 30, 2018, (reference 01) unemployment insurance decision that allowed benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on December 28, 2018. Claimant participated personally and through witnesses Derek Frock and Laura Snow. Employer participated through sow farm supervisor Joe Miller. After the administrative law judge learned human resource supervisor Erin Hyde was driving a car while testifying, she was given the choice to pull over or not participate in the hearing. Hyde chose not to participate in the hearing and her testimony will not be considered in this decision as claimant did not have the opportunity to cross examine the witness. Employer's Exhibit 1 was received.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on March 1, 2018. Claimant last worked as a full-time animal caretaker. Claimant was separated from employment on November 9, 2018, when she was terminated.

Employer has a policy stating employees will be terminated after six unexcused absences in one year. Claimant was aware of the policy.

Employer has a policy stating that job abandonment will result in termination. Claimant was aware of the policy.

On November 9, 2018, claimant was working. Sow farm supervisor Joe Miller met with claimant to address performance issues, including attendance, poor attitude, and complaining. Claimant stated she wanted to talk to Miller's supervisor, Dan Jorgenson, whose office was at another location. Miller stated, "Go. Go ahead. But I can tell you right now that he is not in the office." Miller directed claimant to human resources instead. Claimant stated she was going to Jorgenson's office and would also call human resources.

Claimant left the premises and drove to Jorgenson's office. Claimant asked an employee in Jorgenson's office to call him. The employee did so and claimant spoke to Jorgenson for 20 or 30 minutes about the issues she was having. Jorgenson told claimant that he had been informed she was going to be terminated for job abandonment, but that he would have to confirm that information with human resource supervisor Erin Hyde. Jorgenson did not instruct claimant to return to the premises at the end of the phone call. Instead, he told her that he would see what he could do. Later that day, Hyde called claimant and terminated her for job abandonment.

Claimant had never been previously disciplined regarding job abandonment.

Claimant had been previously disciplined regarding attendance. At the time of her termination, employer had not determined whether claimant had accrued enough attendance points to be considered for termination. Employer was still considering whether it would allow claimant to use paid time off for some of her absences.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, employer terminated claimant for abandoning the job—not excessive absenteeism. However, employer did not establish claimant abandoned the job. Claimant left the job site, only after telling her supervisor, Joe Miller, she was going to speak with a higher level manager, Dan Jorgenson. Miller told claimant to "go ahead," but that Jorgenson was not in his office. Claimant went to Jorgenson's office, as she stated she would. Office staff was able to reach Jorgenson and claimant spoke with him for 20 to 30 minutes. Jorgenson told claimant he believed she had already been terminated and did not instruct her to go back to the job site. He instead suggested they wait to hear from Erin Hyde. Hyde then called and terminated claimant's employment.

Claimant did not abandon the job at any point in that sequence of events. Claimant went to speak with a manager about concerns at work with her supervisor's knowledge and what could be reasonably interpreted as his approval. Employer failed to establish claimant was terminated for job-related misconduct.

Because claimant is qualified to receive benefits, the issues regarding overpayment are moot and will not be discussed further in this decision.

DECISION:

The November 30, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/scn