

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STACEY A BEIERLE**  
Claimant

**APPEAL NO: 19A-UI-00218-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MANDEL PROPERTY SERVICES INC**  
Employer

**OC: 12/02/18**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

Stacy Beierle, the claimant filed a timely appeal from a representative's unemployment insurance decision dated January 8, 2019, (reference 02) which denied benefits, finding that the claimant was discharged from work on December 7, 2018 because the claimant failed to perform satisfactory work although the claimant was capable of doing so. After due notice was provided, a telephone hearing was held on January 24, 2019. Claimant participated and testified in her own behalf. Although duly notified, there was no participation by the employer.

**ISSUE:**

The issue is whether the evidence in the record establishes work-connected misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

The finding of facts is based solely on the claimant's testimony, as the employer did not participate in the hearing. Having considered all of the evidence in the record, the administrative law judge finds: Stacey Beierle was employed by Mandel Property Services, Inc. from March 26, 2018 until December 7, 2018, when she was discharged. Ms. Beierle worked as an assistant property manager on a full-time basis and was paid by the hour. Her immediate supervisor was Bridgette Cundiff.

Ms. Beierle was discharged at the end of the business day on December 7, 2018 by letter. The letter stated: "the specific reason for this termination is due to performing substandard quality and quantity of work after instructed the proper procedure and technique." At the time of the Ms. Beierle's termination, the employer was in the process of transferring data from the company's old system onto a new system. Ms. Beierle had been requested to prepare a document regarding the transfer of information, however that duty had been taken over by another employee the proceeding day. Ms. Beierle thought that she had completed as much of the report as she could with the information that she had available. The claimant was not aware that the employer was dissatisfied about her work on the report or that she was to be discharged.

In the months leading up to the claimant's discharge, Ms. Beierle had been spoken about her job duties on a number of occasions, as she learned her duties. Ms. Beierle was placed on a warning on 08/14/18 for acting contrary to the employer's interests when dealing with clients, prospective renters, and others. Based upon a number of congratulatory emails and communications that were sent to Ms. Beierle by a company senior portfolio director and others, Ms. Beierle believed that her work had improved and was acceptable to the company. At the time of the claimant's discharge, she was planning on attending an employer conference with other company representatives and was unaware that her job was in jeopardy.

Ms. Beierle denies being rude or acting inappropriately towards any clients, or while she was showing an apartment to a prospective tenant and her mother shortly before her discharge. At the time when the employer questioned her about a complaint about the showing, Ms. Beierle had explained that the prospective tenant was upset because a different worker had misidentified the type of apartment that the tenant was seeking and the prospective tenant was angry for that reason.

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

The question before the administrative law judge is whether the evidence in the record establishes work-connected misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

Iowa Code section 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 disqualification shall continue 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 this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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).

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. See 871 IAC 24.32(4).

In the case at hand, the claimant participated personally, testified under oath, and denied all allegations of intentional misconduct in connection with her work. Claimant denied being rude or acting inappropriately to prospective clients or others and denied all allegations of misconduct with respect to a work assignment that had been given to her shortly before her termination. Ms. Beierle testified that a spreadsheet assignment given to her by the company had been given to another worker the day before her termination and that Ms. Beierle was unaware that her job was in jeopardy. Although Ms. Beierle had been placed on warning in the past, claimant received a number of communications from upper management during the weeks preceding her discharge congratulating the claimant on her good work. It is the claimant's belief that her discharge was related to a statement that she had made on company's survey on the day of her termination expressing the claimant's belief "she was not being treated fairly by the company."

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.

While the employer's decision to terminate Ms. Beierle may have been a sound management decision, the evidence in the hearing record is not sufficient to establish intentional work-connected misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. Ms. Beierle was discharged because she could not meet the employer's performance expectations through no fault of her own. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's unemployment insurance decision dated January 8, 2019, reference 02 is reversed. Claimant was separated under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

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Terry P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

tn/scn