

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**KELLY R SINDT**  
Claimant

**PACKERS SANITATION SERVICES INC**  
Employer

**APPEAL 18A-UI-11951-AW-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 11/04/18**  
**Claimant: Appellant (2)**

---

Iowa Code § 96.5(2) – Discharge for Misconduct  
Iowa Admin r. 871-24.32 – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Kelly Sindt, Claimant, filed an appeal from the December 6, 2018 (reference 02) unemployment insurance decision that denied benefits because she was discharged from work with Packers Sanitation Services, Inc. for failure to perform satisfactory work. The parties were properly notified of the hearing. A telephone hearing was held on December 31, 2018 at 1:00 p.m. Claimant participated. Employer did not participate. No exhibits were admitted.

**ISSUE:**

Whether claimant's separation was a discharge due to disqualifying job-related misconduct.

**FINDINGS OF FACT:**

As claimant was the only witness, the administrative law judge makes the following findings of fact based solely upon claimant's testimony: Claimant was employed full-time as a sanitation supervisor from November 24, 2015 until she was discharged by Packers Sanitation Services, Inc. in October 2018. Employer cited safety concerns as the reason for claimant's termination.

Approximately a week before claimant was discharged, two of claimant's subordinate employees were standing on a conveyor belt without locking out the machine. Their actions violated a company rule and endangered their safety. Claimant told her employees that they could not stand on the conveyor belts without locking out the machine. Claimant did not issue a written warning, because she had been told by her supervisor that she could not discipline her employees without proof of misconduct. Claimant did not have proof that her employees were standing on the conveyor belt without locking it out and, therefore, did not take further disciplinary action against the employees.

Claimant was told that she was being terminated for not stopping her employees from standing on the conveyor belt without locking out the machine. Claimant was not given an opportunity to explain her conduct. Claimant had not received any prior warnings for similar conduct. Claimant did not believe her job was in jeopardy. Claimant's employees who violated the policy were not terminated; they received three-day suspensions. Claimant does not know why she was terminated instead of suspended.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was terminated for no disqualifying reason. Benefits are allowed.

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 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting 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). Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily

disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. 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).

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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Claimant told her employees not to stand on the conveyor belt without locking out the machine. Claimant did not further discipline her employees based upon her good faith belief that she was not able to do so without proof of misconduct. Claimant's failure to stop her employees from standing on the conveyor belt was not a material breach of her job duties and obligations, a willful or wanton disregard of her employer's interest or a deliberate violation or disregard of standards of behavior her employer had a right to expect of her. In fact, claimant was following her supervisor's instructions regarding disciplinary action. Employer has not met its burden of proving disqualifying, job-related misconduct.

Furthermore, employer discharged claimant, but only suspended the employees who violated the company policy and endangered their safety after being told not to do so by their supervisor. The claimant seems to have been the subject of disparate application of employer's policies and discipline, which cannot support a disqualification from benefits.

**DECISION:**

The December 6, 2018 (reference 02) unemployment insurance decision is reversed. Benefits are allowed provided claimant is otherwise eligible.

---

Adrienne C. Williamson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, IA 50319-0209  
Fax: 515-478-3528

---

Decision Dated and Mailed

acw/rvs