

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MORGAN WEEKS
902 34TH ST
MOLINE IL 61265-2366**

**Vera French Community Mental Health
Shelly Chapman
1441 W Central Park Ave
Davenport IA 52804**

**DIA APPEAL NO. 21IWDUI0121
IWD APPEAL 20A-UI-09767**

**ADMINISTRATIVE LAW JUDGE
DECISION**

APPEAL RIGHTS:

This Decision Shall Become Final, unless within fifteen (15) days from the mailing date below the administrative law judge's signature on the last page of the decision, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

***Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
or
Fax (515) 281-7191***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

ONLINE RESOURCES:

UI law and administrative rules: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-law-and-administrative-rules>

UI Benefits Handbook: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-benefits-handbook-guide-unemployment-insurance-benefits>

Handbook for Employers and forms: <https://www.iowaworkforcedevelopment.gov/employerforms>

Employer account access and information: <https://www.myiowaui.org/UITIPTaxWeb/>

National Career Readiness Certificate and Skilled Iowa Initiative: <http://skillediowa.org/>

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MORGAN WEEKS
Claimant

**DIA APPEAL NO. 21IWDUI0121
IWD APPEAL NO. 20A-UI-09767**

**VERA FRENCH COMMUNITY MENTAL
HEALTH**
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 6/14/2020
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant, Morgan Weeks, filed an appeal from the August 10, 2020 (reference 01) unemployment insurance decision that denied benefits based upon a determination she had been discharged for “conduct not in the best interests of your employer.” After proper notice, a telephone hearing commenced on September 29, 2020. Claimant appeared and testified. Shelly Chapman and Denise Beenk appeared and testified for Employer. Employer offered Exhibits 1-4, all of which were admitted into the record.

ISSUE(S):

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant Morgan Weeks worked as a direct support supervisor for Vera French in Davenport. Her duties included being in charge of two habilitation homes and supervising other staff. Her supervisors were Denise Beenk and Kate DeRooi. Prior to the incidents that lead to her termination, Claimant had had no other previous discipline at Vera French. Complaints from other workers, however, lead management to investigate Claimant for various issues. Eventually, these issues caused her to be terminated on May 21, 2020.

In short, management found three concerning issues that caused Claimant’s terminations. First, Vera French determined that Claimant had failed to work scheduled shifts, giving at least one of them to another employee that caused him to be paid overtime. Second, it found she had violated certain “boundary issues” by allowing her boyfriend (who also worked at Vera French) to cover a shift for her. And, it determined that she had failed to properly document services and client progress. Each issue will be set out individually.

Missing Shifts: Certain other staff reported not having seen Claimant in the homes on some dates, and supervisors were unable to find documentation of the services provided by Claimant. In particular, on May 5, 2020, Claimant was scheduled to work from 7 a.m. to 3 p.m. at Main Street. However, she chose to assign this shift to another worker and did not report this to her own supervisor. Then, on May 6, she was scheduled to work at Marquette from 3 p.m. until 9 p.m., but management was unable to find any documentation that she had worked that day, “other than passing medications.” But, at the hearing, Beenk did discover and confirm that Claimant did “clock in” from 10 a.m. to 3 p.m. and again 5 p.m. to 10 p.m.

Boundary Issues: Claimant was in a consensual relationship with another staff member, Ryan Zitkus. After this came to the attention of Vera French, they were asked to sign a “Consensual Relationship Agreement” in which they agree to act professionally. Despite this, Claimant did give her May 5 shift to Zitkus. Vera French found this shift assignment constituted a “boundary issue.”

Documentation Issues: Staff must document client progress, services provided, and medications provided. Management was unable to find that Claimant had any documentation from her May 6 shift. This led management to find Claimant had not provided a sufficient level of protective oversight to her clients. Vera French’s documentation policy is that it has to be entered within seven days.

Claimant responded to these findings. First, she testified that she only missed work and reassigned her shift on May 5 because she had a surgery. While she did give the shift to her boyfriend, she only did so after getting permission from her boyfriend’s supervisor to do so. Then, on May 6, she did in fact work with only a short break in between because she had an additional outpatient surgery.

With respect to the boundary issues, again, she did admit to assigning her boyfriend a shift. However, she was never told that she could not give him a shift and her Consensual Relationship Agreement does not expressly, or even impliedly, prohibit it. And, she did get permission from the boyfriend’s supervisor for this assignment. Finally, regarding the documentation issue, Claimant claimed it was common practice at Vera French to go back and document work at a later date. She, in fact, did keep detailed notes on May 6 that she intended to go back and add at a later date. However, she had not yet done so by the date she was terminated.

REASONING AND CONCLUSIONS OF LAW:

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

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).

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.

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). 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. 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). 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.

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 focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* 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). Further, 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). 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)(fact that claimant, who was a snowplower, had two accidents involving utility lines within three days did not constitute misconduct such as would disqualify claimant from receiving unemployment benefits; there was no evidence that claimant intentionally or deliberately damaged utility lines or violated any traffic laws, and there was uncontroverted evidence that accidents were beyond claimant's control).

I would first venture an observation that under these facts Vera French was undoubtedly reasonable in its decision to terminate Claimant's employment. However, that is not the question presented in an unemployment benefit hearing. Rather, that question must be viewed through the lens of the maxim that unemployment statutes should be interpreted liberally to achieve the legislative goal of minimizing the burden of involuntary unemployment." Cosper v. Iowa Dep't of Job Serv., 321 N.W.2d 6, 10 (Iowa 1982). In light of this consideration and the facts of this matter, I cannot find that the reasons for which Claimant was terminated constituted misconduct, even when viewed in a light most favorable to the Employer's finding and interpretation.

First, there is no evidence in this record that Claimant intentionally disregarded the rights of her employer or that she acted with wrongful intent or malice. Rather, her actions were more akin to "unsatisfactory conduct, failure in good performance," inadvertencies ordinary errors in judgment. In making this determination, I note the following:

With regard to May 5, 2020, Claimant did get coverage for her shift and therefore her clients were cared for and provided services. They were under no danger. Next, with regard to May 6, records did show that Claimant did clock in and actually work nine hours. Again, her clients were in no risk of harm. Third, with regard to the claim of "boundary issues," while perhaps it did look untoward to allow her boyfriend to work for her, there is no work policy in this record that was violated. And, again, she did get coverage and her clients were provided for. There is no evidence that the boyfriend provided substandard care. Finally, I accept Claimant's explanation that it was common practice to document services at a later date that she just had not done so yet. Although this is a violation of a work rule, it is not so substantial or egregious as to constitute the type of misconduct that would disqualify her from unemployment benefits.

For all of these reasons, I conclude there was no disqualifying misconduct alleged here. IWD's decision to the contrary must be REVERSED.

DECISION:

The August 10, 2020 (reference 01) unemployment insurance decision is REVERSED. Claimant is eligible to receive benefits. Any benefits claimed and withheld on this basis shall be paid.



David Lindgren
Administrative Law Judge

9/30/2020

Decision Dated and Mailed

cc: Morgan Weeks, Claimant (By email and mail)
Vera French, Employer (By email and mail)
Nicole Merrill, IWD (By email)
Joni Benson, IWD (By email)