

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KAREN K DORPINGHAUS**  
Claimant

**HEARTLAND DENTAL LLC**  
Employer

**APPEAL 17A-UI-12076-NM-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 10/22/17**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the November 13, 2017, (reference 01) unemployment insurance decision that denied benefits based on her discharge for conduct not in the best interest of the employer. The parties were properly notified of the hearing. A telephone hearing was held on January 3, 2018. The claimant participated and testified. The employer did not participate. Claimant's Exhibit A was received into evidence.

**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: Claimant was employed full time as a business assistant from December 27, 2012, until this employment ended on October 19, 2017, when she was discharged.

On October 19, 2017, claimant was called into a meeting with Regional Manager of Operations Paul Jett. During that meeting Jett told claimant he did not think she liked her job and she did not seem like she wanted to be there. Claimant was then discharged from employment. Jett also brought up a situation that had occurred during the morning huddle where claimant had commented to some other employees that a former coworker was starting her new job that day. This comment appeared to offend one of the dentists in the huddle, Dr. Hopper, and he told them they were not to be discussing former employees.

Claimant testified the only prior discipline she had was in January 2017, when she was given verbal coaching for her attitude. Claimant admitted she was upset about some changes that were occurring during that time and had issues with her attitude because of this. Claimant further testified that she believed she had improved and this issue was resolved. According to claimant she had even been told by her immediate supervisor, Practice Manager of Operations Willie Kappie, that he thought things were going well and the issues had been resolved.

## REASONING AND CONCLUSIONS OF LAW:

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

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 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.

871 IAC 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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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). 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). 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).

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. 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.

Here, the claimant was discharged following a comment she made about a former employee starting her new job that day and based on the employer's belief that she was not happy in her job. The behavior in which claimant engaged is not misconduct, nor would it lead a reasonable person to believe he or she may be discharged. Inasmuch as the employer has failed to identify any disqualifying misconduct in which the claimant engaged, it has not met its burden of proof. Accordingly, benefits are allowed, provided claimant is otherwise eligible.

**DECISION:**

The November 13, 2017, (reference 01) unemployment insurance decision is reversed. 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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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs