

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNIFER A LESTER**  
Claimant

**APPEAL NO. 13A-UI-03599-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WHIRLPOOL CORPORATION**  
Employer

**OC: 02-24-13**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the March 15, 2013, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on April 26, 2013. The claimant did participate with Matt Novak, Attorney at Law. The employer did participate through (representative) Jennifer Ferrell, Human Resources Manager; Jeff Anderson, Human Resources Generalist, and Robert Devaux, Human Resources Manager. Claimant's Exhibits One and Two were entered and received into the record. Employer's Exhibit One was entered and received into the record.

**ISSUE:**

Was the claimant discharged due to job connected misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed at Whirlpool as a production supervisor full time beginning March 24, 2003 through February 25, 2013 when she was discharged. The claimant was discharged for allegedly falsifying her statement to the employer when they were conducting an investigation. As a supervisor the claimant's position was not covered by the union contract but was responsible for enforcing it. The employer received a complaint that the claimant had made comments at a birthday party she attended in January that she was going to get rid of some employees and move others to first shift.

The employer called the claimant into a meeting on February 13, and asked her about whether she had made the comments. The claimant did not recall making the comments. She was not told what information the employer was looking for when she was questioned initially. The claimant reported everything she could remember to the employer at the time of the initial interview. The claimant was not asked to write down a statement. During a second meeting on February 18, the claimant was reminded that she had allegedly made these comments at a birthday party she attended outside of work. The claimant reported that she had been drinking heavily that night and ended up spending the night at someone else's house. When her memory was refreshed, the claimant immediately reported what she had said and done, none of

which was what the disgruntled employees had alleged. The claimant never admitted making the statements about firing employees or moving others to first shift. She did remember that she had attended the birthday party and some of the employees who were at the party. When interviewed initially the claimant simply did not remember or know what event the employer was discussing. The claimant was discharged for allegedly falsifying her statements to the employer during the February 13, 2013 meeting. She had no prior warning for any similar conduct or behavior.

### **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.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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.” When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa 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, employer incurs potential liability for unemployment insurance benefits related to that separation. The conduct for which claimant was discharged was merely a memory lapse. The employer’s evidence does not establish that the claimant intentionally withheld information. Due to her alcohol consumption and the employer’s failure to ask her specifics, she simply forgot events. Under such circumstances the administrative law judge cannot conclude that the claimant was discharged for disqualifying misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The March 15, 2013 (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs