

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**WAYNE W GREGORY**  
Claimant

**WHIRLPOOL CORPORATION**  
Employer

**APPEAL 17A-UI-12201-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/01/17  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the November 16, 2017, (reference 01) unemployment insurance decision that denied benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on December 19, 2017. Claimant participated personally and through union business representative Randy Krewson. Claimant was represented by attorney Dennis Currell. Employer did not answer at the telephone number it provided for the hearing and did not participate. Claimant's Exhibit A was received.

**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 began working for employer on March 5, 2015. Claimant last worked as a full-time plastics set-up operator. Claimant was separated from employment on October 11, 2017, when he was discharged.

Claimant has a work-related shoulder injury. Claimant filed a workers' compensation claim because of the injury. On February 15, 2017, claimant had surgery on his shoulder. He briefly returned to work on March 20 and 21, 2017. However, he was not released to return to work by the doctor hired by employer's workers' compensation insurance carrier until sometime in April 2017. Claimant did not return to work at that time as his family doctor and psychiatrist recommended he not return to work. Claimant was taking pain medication that affected his ability to work in a factory setting and had mental health issues. Claimant's attorney and medical providers sent documentation of the providers' recommendations to the attorney representing employer in the workers' compensation matter. Claimant also attempted to apply for Family and Medical Leave Act (FMLA) leave, but was unsuccessful in being approved by employer. Claimant underwent a second shoulder surgery on September 5, 2017. The surgery was performed by a doctor hired by employer's workers' compensation insurance carrier.

By September 22, 2017, claimant had not been released to return to work by the doctor who performed the surgery. Claimant also had not been released to return to work by his personal healthcare providers.

On September 22, 2017, employer sent claimant a letter stating he had been on an unapproved absence since April 5, 2017. Employer noted it received documentation from one of claimant's medical providers stating he was unable to "function in a professional capacity at work." Employer requested specific information from claimant's medical provider including confirmation of the necessity for absences, duration of condition, expected date of return, restrictions necessary for return to work, and release confirming the ability to return to work. The letter stated claimant could be terminated if he did not provide the requested information by September 29, 2017.

On September 27, 2017, claimant's attorney responded to the letter by stating that all of the requested information had been provided to the attorney representing employer in the workers' compensation matter. Claimant's attorney asked employer to let him know if it was unable to obtain the information from its attorney.

Union business representative Randy Krewson also attempted to contact employer regarding its September 22, 2017, letter, but received no response.

On October 11, 2017, employer sent claimant a letter terminating his employment.

Prior to the September 22, 2017, letter, employer never issued any discipline or other correspondence stating his absences were considered unexcused.

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

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

Iowa Code § 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 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).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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). 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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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). 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). 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).

In this case, employer terminated claimant for allegedly failing to respond to its request for additional information regarding his medical condition. Claimant's attorney responded to the request on claimant's behalf by referring employer to the numerous medical records that had been provided in the workers' compensation matter. Claimant's attorney asked employer to contact him if employer could not gain access to the information. Employer did not contact claimant's attorney. Instead, it terminated claimant's employment. Claimant's response was reasonable given the circumstances. Employer failed to establish claimant was terminated for job-related misconduct.

**DECISION:**

The November 16, 2017, (reference 01) unemployment insurance decision is reversed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Christine A. Louis  
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Decision Dated and Mailed

cal/scn