

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAMISHA C LEWIS

Claimant

APPEAL 21A-UI-24936-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OSKALOOSA GATEWAY HOTEL LLC

Employer

OC: 04/11/21

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from the October 28, 2021 (reference 03) unemployment insurance decision that denied benefits finding claimant was discharged by Oskaloosa Gateway Hotel on September 29, 2021 for conduct not in employer's best interests. The parties were properly notified of the hearing. A telephone hearing was held on January 7, 2022. Claimant participated. Employer participated through Kimberly Aalbers, General Manager, and Krystal Carey, Assistant General Manager. Claimant's Exhibits 1 through 5 were admitted.

ISSUE:

Whether claimant's separation was a discharge 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 as a part-time Front Desk Agent from May 10, 2021 until her employment with Oskaloosa Gateway Hotel ended on September 29, 2021. Claimant worked Saturday and Sunday and picked up other shifts when available. Claimant's direct supervisor was Kimberly Aalbers, General Manager.

On September 11, 2021, an employee became ill while at work. The employee asked claimant to cover the remainder of her shift. Claimant agreed although she was not scheduled to work. Claimant informed Krystal Carey, Assistant General Manager, of the issue and that claimant would provide coverage for the ill employee. (Exhibits 1 – 3) Aalbers was not informed of the issue and coverage; Aalbers learned of the coverage when she received a text message from claimant about an issue at work on September 11, 2021. Claimant and Aalbers proceeded to argue via text message. Claimant did not use profanity, name call or use threatening language. Aalbers later learned that claimant showed their text messages to a coworker. Claimant was not scheduled to work after September 11, 2021.

On September 21, 2021, employer asked claimant to report to work on September 22, 2021 for a meeting with management. Claimant declined because she had other plans. On September 29, 2021, employer discharged claimant because of her text message exchange

with Aalbers on September 11, 2021 and for showing those text messages to a coworker. Claimant had no prior warnings for being argumentative with her superior or for telling coworkers about conversations she had with a superior.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

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).

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). "Balky and argumentative" conduct is not necessarily disqualifying. *Endicott v. Iowa Dept. of Job Service*, 367 N.W.2d 300, 303 (Iowa Ct. App. 1985)(citation omitted).

Insubordination does not equal misconduct if it is reasonable under the circumstances. The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.* 367 N.W.2d 300 (Iowa Ct. App. 1985). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. *Woods v. Iowa Dep't of Job Serv.*, 327 N.W.2d 768, 771 (Iowa 1982).

Claimant argued with her superior but did not use profanity, name call or use threatening language. Claimant's balky and argumentative conduct does not rise to the level of disqualifying job-related misconduct. Showing the text messages to a coworker was unprofessional but also does not rise to the level of disqualifying job-related misconduct without a prior warning. Employer's request for claimant to attend a management meeting was reasonable. Claimant's refusal to attend the meeting with one day's notice and other plans was also reasonable. Therefore, claimant's refusal to attend the meeting does not constitute disqualifying insubordination.

Employer has not met its burden of proving claimant was discharged for disqualifying, job related misconduct. Claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

DECISION:

The October 28, 2021 (reference 03) unemployment insurance decision is reversed. Claimant was discharged for no disqualifying reason. 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, Iowa 50319-0209
Fax (515)478-3528

February 3, 2022
Decision Dated and Mailed

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