

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DEBORAH ARENSON
Claimant

APPEAL NO: 18A-UI-06942-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 06/03/18
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 21, 2018, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 16, 2018. The claimant participated in the hearing with Attorney James Arenson. Mary Eggenburg, Benefits Specialist and Mary Kayt Conrad, Administrator Performing Arts, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time administrative services coordinator for The University of Iowa from June 1, 2015 to June 5, 2018. She voluntarily resigned when given the option of resigning or having her employment terminated.

On May 24, 2018, an acquaintance of the claimant contacted Administrator Performing Arts Mary Kayt Conrad and made a complaint about text messages she received from the claimant in March 2018 following an incident at a dance competition unrelated to the University. The acquaintance's daughter will be a freshman at the University of Iowa in the fall of 2018 and was interested in trying out for the dance team. The claimant's text messages implied she could interfere between the acquaintance's daughter and the head and assistant coach of the dance team and the acquaintance felt the claimant was threatening to retaliate against her daughter because of the disagreement in March 2018.

On May 25, 2018, Ms. Conrad and a human resources representative met with the claimant and showed her the text messages. The claimant admitting sending the texts and stated she understood why the acquaintance felt threatened but would never have followed through with what she said. The human resources representative took notes regarding the meeting and gave them to the claimant to review. The claimant signed off on the notes. The employer then consulted the Labor Relations Department and it was determined the claimant violated the

anti-harassment and anti-retaliation policies of the University. A senior human resources representative and Ms. Conrad met with the claimant June 5, 2018. The employer had made the decision to terminate the claimant's employment but decided to give the claimant an opportunity to resign instead of being discharged. The employer explained the differences between a voluntary quit and termination and the claimant exercised her option to resign.

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 section 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 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:

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 of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. 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 Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant made inappropriate comments to her acquaintance about influencing her daughter's chances of making the University dance team and left the acquaintance feeling threatened and that the claimant was retaliating against her daughter for a disagreement they had about a non-university related dance competition in March 2018. The claimant admitted sending the text messages and agreed she could understand how her acquaintance felt threatened. In reality the claimant held no sway with the University dance team coaches and did not ever tell the coaches about the incident involving her acquaintance's daughter though the acquaintance did not know the claimant's threat was baseless. With all that being said however, this was an isolated incident of misconduct and poor judgment on the part of the claimant. She had not received any previous verbal or written warnings and did not know her job was in jeopardy over actions she took over two months previously. Under these circumstances, the administrative law judge must conclude the claimant's actions do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The June 21, 2018, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/rvs