

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

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04A-UI-07981-L

Appeal Number:  
OC: 06-27-04 R: 02  
Claimant: Appellant (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the July 20, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 7, 2004. Claimant did participate. Employer did participate through Marcia Edington, Nancy Seel and was represented by Lynn Corbeil of Johnson & Associates.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time direct support associate through July 1, 2004 when she was discharged. Claimant was required to have a valid driver's license as a part of her job duties even though she was rarely in a position to have to transport clients. She was jailed from June 23 through June 30,

2004 after she was arrested for driving while suspended after having not paid traffic fines or completed community service requirements.

Employer called claimant to a meeting on July 1 at 1:00 p.m. and placed her on suspension without pay. Claimant became upset and began crying and shaking to the point that she was having trouble writing and remembering personal information. Employer then suspected she was under the influence but did not ask her about it and did not smell anything. Employer asked claimant to take a urine test for a drug screen and claimant agreed at approximately 1:20 p.m.

She reported to employer that she would have to leave no later than 2:15 p.m. to reach her medical appointment (the first of every third month) in Newton on time. The person administering the shot was available for a limited time frame. Claimant's friend, Beth, who was driving her, also had an appointment with an insurance adjuster that day. Because claimant had voided her bladder before the meeting, she was unable to provide a urine sample, even after ingesting water and Sprite, before she needed to leave for her appointment. Employer did not allow her to return after her appointment to provide a sample and discharged her pursuant to policy that allows for discharge upon refusal to take a drug test.

After the separation, claimant was diagnosed with Graves' disease. During the course of the hearing, the administrative law judge observed claimant to appear to be very nervous, fidgety and halting in her speech but did not believe her to be intoxicated as many parties unfamiliar with the process exhibit similar behaviors.

#### 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 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). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988).

Graves' disease is defined as: A condition usually caused by excessive thyroid hormone and characterized by an enlarged thyroid gland, protrusion of eyeballs, a rapid heartbeat, and nervous excitability. Also called *Basedow's disease*, *Parry's disease*. *The American Heritage® Stedman's Medical Dictionary Copyright © 2002, 2001, 1995 by Houghton Mifflin Company.*

While claimant was suspended, but ultimately not separated, due to her driver's license suspension, the final act was the failure to complete the drug screen sample. Claimant's condition that caused her to behave in such a manner as to make employer believe she was "under the influence" during the meeting could well have been the result of symptoms of her subsequently diagnosed Graves' disease or mere nervousness. This is also consistent with her demeanor in the hearing. Claimant did not refuse to take the drug screen and even attempted to provide a sample but could not do so before her prearranged appointment some distance away. Claimant's good faith attempt to provide a sample rendered employer's refusal to allow claimant to return to be tested immediately after her medical appointment unreasonable because of the limited time during which she could receive her injection. Benefits are allowed.

#### DECISION:

The July 20, 2004, reference 01, decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

dml/kjf