

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMMY R HARRAH
Claimant

APPEAL NO. 13A-UI-13369-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOSAIC
Employer

OC: 11/03/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Mosaic filed a timely appeal from a representative's decision dated November 26, 2013, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on January 9, 2014. The claimant participated. The employer participated by Mr. Dave Stewart, Hearing Representative and witnesses Ms. Stephanie Gehlhaar, Executive Director and Mr. Tom Keowan, Security Manager. Employer's Exhibits One through Seven were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all the evidence in the record, the administrative law judge finds: Tammy Harrah was employed by Mosaic from June 23, 1993 until November 6, 2013 when she was discharged from employment. Ms. Harrah was employed as a full-time program coordinator and was paid by salary. Her immediate supervisor was Stephanie Gehlhaar.

Ms. Harrah was discharged based upon the employer's belief that the claimant had provided conflicting information about the agreement for a client to pay a portion of the client's mother's fare and some expenses for the mother to visit the client. Ms. Harrah attempted to prepare a copy of an addendum that she had prepared on or about August 13, 2013 about the matter. Ms. Harrah planned to print out the addendum so additional signatures could be added. Because the request had been made on short notice and the claimant was working at a resident household at the time, she attempted to the best of her ability to access Mosaic computer files and records to obtain the addendum. In doing so the claimant experienced a computer issue and was unable to save the addendum in its original file. It is the claimant's belief that she had been able to place it, however, in the client's general folder. Because of the issues raised by the client's mother, the employer believed that Ms. Harrah may not have originally prepared an addendum, as would be the usual practice at the time of the meeting back in August of 2013. When a search of that client's records did not show the addendum, the employer became

further convinced that Ms. Harrah had been untruthful about the original preparation date. The claimant had later submitted a copy of the addendum on November 1, showing an origination date of August 13, 2013.

Ms. Harrah felt that the matter had been resolved. When the claimant was called to a meeting about the matter it was unexpected and could not immediately locate the original of the addendum in the client's file. A decision was made to terminate Ms. Harrah from her employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 the 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. Iowa

Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant the discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” When based upon 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 1988).

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, the employer incurs potential liability for unemployment insurance benefits related to that separation.

In the case at hand the claimant has provided a reasonable explanation as to why she could not immediately locate a copy of the addendum that she had prepared for the client in August of 2013. When called to a meeting with Mosaic’s executive director on November 6, 2013, the claimant was unaware that she would be questioned further about the matter and was unable to immediately provide additional evidence in support of her position that she had created the addendum in August of 2013. It is the claimant’s belief that the original of the addendum could not be located because of a computer problem that had taken place at the time that she was making a copy of it. She was not given sufficient advance notice or time to attempt a further search to find the document when she was called to a discharge meeting on November 6, 2013. The claimant at that time attempted to provide a reasonable explanation to explain why the original document could not be located. While the decision to terminate Ms. Harrah may have been a sound decision from a management viewpoint, for the above-stated reasons the administrative law judge concludes that the evidence in the record does not establish intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative’s decision dated November 26, 2013, reference 01, is affirmed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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