

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ANN M GLENN**  
Claimant

**APPEAL 15A-UI-13778-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EGS CUSTOMER CARE INC**  
Employer

**OC: 11/15/15  
Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code §96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the December 7, 2015, (reference 01) unemployment insurance decision that denied benefits because of voluntary quitting. After due notice was issued, a telephonic hearing was held on January 6, 2016. Claimant Ann M. Glenn participated. Employer participated through TALX Human Resources Generalist Turkessa Newsome, Team Lead Rita Ricketts, and Operations Manager Liz Paulson.

**ISSUES:**

Did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a customer service representative from October 29, 2001, and was separated from employment on November 16, 2015, when she was terminated.

Most recently, claimant worked from her home and performed duties relating to Anthem, one of the employer's clients. Claimant made errors while working on the Anthem project on the following dates: October 15; October 22; October 23, and October 31. The employer initially became aware of these cumulative errors when service delivery manager, Wendy Leffler, emailed operations manager, Liz Paulson, and notified her that due to the errors, the claimant should be removed from working on the Anthem project. On November 12, Ricketts informed the claimant that she was removed from the project and told her she would need to begin reporting to work at the employer's worksite so she could work an action plan and improve her performance. Claimant responded that she could not come to the worksite because she had approved intermittent FMLA leave. Ricketts then spoke with Tara Bartlett, the employer's site supervisor, and Bartlett agreed that the claimant could work her action plan at the worksite only three days per week.

Ricketts contacted the claimant on November 13 and informed her that the employer only needed her to report to the worksite three days per week to work the action plan. Claimant refused to agree to this, and she raised the issue of her FMLA leave again. Ricketts told the claimant she would give her until the following Monday, November 16, to agree to begin reporting to the worksite three days per week. Ricketts testified that she made the claimant aware her job was in jeopardy if she refused to come to the worksite. The parties agree that the claimant did not have any current restriction that prevented her from working in a call center.

On November 16, Ricketts called the claimant to ask her decision, and the claimant stated she would not come back to the worksite. Ricketts responded that the claimant's employment would end because she was disregarding the instruction to begin reporting to the employer's worksite. Claimant went to the worksite later that day and turned in her badge to Paulson.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

Iowa Code § 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.

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).

Claimant made errors while performing her job duties on a specific work project. Because of these errors, the employer removed claimant from the project and instructed her to return to the worksite on a temporary basis to work an action plan and ensure her performance improved so that she could be returned to the project. Claimant refused to comply with this directive. The misconduct in this case lies in the claimant's refusal to follow her employer's instruction to improve and demonstrate her competence after she made errors, not in the errors themselves. Her refusal deliberately disregarded her employer's interests in ensuring the competence of its employees and in meeting its customers' expectations. Benefits are denied.

#### **DECISION:**

The December 7, 2015, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged for disqualifying misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

lj/pjs