

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CARTIS WASHINGTON**  
Claimant

**SHELTER HOUSE COMMUNITY SHELTER**  
Employer

**APPEAL 21A-UI-06045-S1-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/18/20**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5-2-a – Discharge for Misconduct  
Iowa Code § 96.5-1 - Voluntary Quit

**STATEMENT OF THE CASE:**

Cartis Washington (claimant) appealed an Iowa Workforce Development March 10, 2021, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits after a separation from work with Shelter House Community Shelter (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 3, 2021. The claimant participated personally. The employer participated by Catherine Gerlach, Director of Operations/General Counsel, and Debbie Peck, Emergency Services Director.

The employer offered and Exhibit One, Two, and Three were received into evidence. The administrative law judge took official notice of the administrative file.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on February 15, 2013, and at the end of his employment he was working as a full-time kitchen manager. He signed for receipt of the employer's handbook on November 20, 2017.

On September 17, 2020, the employer issued the claimant a written warning after a person at a facility complained about food temperatures and moldy bread. The meal the claimant sent did not include bread. The food was consumed more than thirty minutes after delivered. The warning contained other infractions, such as out of date food on shelves. The employer notified the claimant that further infractions regarding food safety could result in the claimant's separation from employment.

On September 23, 2020, the employer issued the claimant a written warning for violating the vacation policy. The claimant lined up employees to work for him and those workers did not

appear. The employer notified the claimant that further infractions of the absenteeism policy could result in the claimant's separation from employment. The claimant accumulated many vacation days but felt he was not allowed to use the days. He thought he followed the rules but was later told he was out of compliance.

On October 21, 2020, the claimant worked his full shift. As he prepared food that day, there were leftovers. At least three previous supervisors told the claimant he could take leftover food home. When he left work, he carried a bag containing the clothes he wore as he walked to work in the rain in the morning and a bag with the boxed up leftovers. An unknown person told the supervisor the claimant took the employer's property without permission. The supervisor saw a picture of the claimant leaving with bags. She did not know what property, if any, the claimant took from the employer. The supervisor never questioned the claimant about the subject. She assumed the claimant took something.

The claimant needed time to take his daughter to her wellness checkup with her physician on October 22, 2020. The claimant provided a week's notice, as was required in the employer's policies. He found employees to cover his shift. The claimant's supervisor was absent for a period and the supervisor did not forward her email. On October 22, 2020, the claimant left work early to take his daughter to the doctor. On October 22, 2020, the supervisor told the claimant she was terminating him for leaving work early on October 22, 2020. She mailed him a document stating he was terminated for leaving work early without permission and taking items belonging to the employer.

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

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

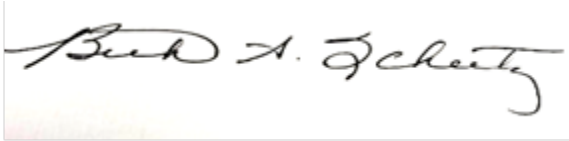
The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer terminated the claimant for two reasons: issues around absenteeism and theft.

The employer terminated the claimant for issues surrounding the topic of absenteeism. The employer did not provide information at the hearing showing it instructed the claimant how to report requests for time off. The employer did not show to whom the claimant was to report, how early the claimant was to report, what coverage the claimant was to provide, and any other requirements the employer expected. The warning of September 23, 2020, provided some guidance but very little. Employees must be allowed time off to care for themselves and their families. If not, their vacation time is meaningless.

The second reason for termination was theft. The employer provided pictures of the claimant leaving work with bags in his hands. This was not a prohibited act. It did not establish what, if anything, the claimant took. In addition, it did not provide the name of the witness. If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The employer had the power to present the name and testimony of an eyewitness. The employer did not provide first-hand testimony at the hearing and, therefore, did not provide sufficient eyewitness evidence of job-related misconduct to rebut the claimant's denial of said conduct. The employer did not meet its burden of proof to show misconduct.

**DECISION:**

The representative's March 10, 2021, decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

A handwritten signature in black ink, reading "Beth A. Scheetz", is positioned above a horizontal line.

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Beth A. Scheetz  
Administrative Law Judge

May 11, 2021  
Decision Dated and Mailed

bas/kmj