

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DELENA L GILLMAN**  
Claimant

**APPEAL NO. 07A-UI-05347-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNITED PARCEL SERVICE**  
Employer

**OC: 04-22-07 R: 02  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the May 10, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 13, 2007. The claimant did participate. The employer did participate through Terra Winter, Occupational Health Supervisor. Employer's Exhibit One was received.

**ISSUE:**

Was the claimant discharged for work-related misconduct?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a loader part time beginning October 23, 2005 through February 8, 2007, when she was discharged.

The employer alleges that the claimant did not keep them apprised in a timely manner of her medical status and need for leave and thus was discharged. The last letter the employer sent to the claimant, dated January 19, 2007, required that the claimant provide documentation of her need to be off work by January 26, 2007. As is evidenced by the green card, the claimant did not receive the letter until February 1, 2007, after the employer compliance deadline had passed. When the claimant received the letter, she contacted her immediate supervisor on February 1, 2007, and notified her that she had upcoming medical appointments in the next few days and that once she attended those appointment and collected information from the medical providers, she would forward it to the employer. The supervisor approved of the claimant's plan to apprise the employer of her medical condition after her upcoming medical visits. The claimant forwarded information from her medical visits of February 1 and February 6 to the employer on February 15. The employer had already discharged the claimant on February 8, 2007. The claimant was off work due to a non-work-related injury. Under company policy, the employer does not accommodate any work restrictions that result for a non-work-related injury.

## 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 § 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 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).

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, employer incurs potential liability for

unemployment insurance benefits related to that separation. The claimant did keep her immediate supervisor informed about her ongoing medical condition and did provide the requested information. The claimant could not comply with a deadline of January 26 when she did not even receive the letter until after the deadline had elapsed. The claimant's uncontroverted testimony that her supervisor allowed her to send in the information after her next medical visits is persuasive. Being off work on medical restrictions is not work-related misconduct. While the employer certainly has reason to expect employees to keep them informed, the record here does not establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. The claimant complied with the employer's expectation to keep them informed. Benefits are allowed.

**DECISION:**

The May 10, 2007, reference 01, decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/kjw