

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DIANA NANYON**  
Claimant

**APPEAL 21A-UI-03921-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REM IOWA COMMUNITY SERVICES INC**  
Employer

**OC: 11/01/20  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the January 21, 2021 (reference 01) unemployment insurance decision that denied unemployment insurance benefits to the claimant based upon the claimant's separation from employment. The parties were properly notified of the hearing. A telephone hearing was held on April 1, 2021. The claimant participated personally. The employer participated through witness Angel Waters. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a direct support professional. Her employment began on February 22, 2019 and ended on November 4, 2020 when she was discharged from employment.

On October 27, 2020, the claimant was caring for two individual clients who were not able to care for themselves. Claimant was alone in the home with the two clients. Claimant went to her car to retrieve her jacket and as she was walking outside, one of the client's family members drove up to the home. The claimant retrieved her jacket from her car and walked back into the home with the client's family member. Claimant was outside for only a minute or two. Claimant continued caring for the clients until the end of her shift. Claimant received no complaints from the family member during her shift; however, the family member complained to management that the claimant was in her car for 15 minutes and outside again for another 10 minutes. The employer conducted an investigation. Claimant was discharged for failure to provide care and being outside the home for any period of time.

Claimant had reviewed the two clients' care plans and she believed that the care plans provided that each client could have 15 minutes of alone time. Claimant was unaware of any policy that prohibited her from leaving the home to go to her car to retrieve a personal item. Claimant had

no previous discipline during the course of her employment. No written policies or care plans were presented by either party for the hearing.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes as follows:

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).

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

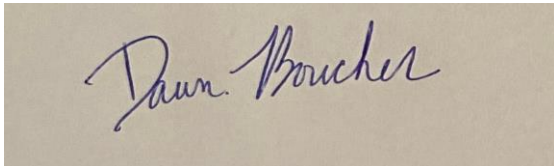
(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling 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-related misconduct. *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). 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 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).

Claimant spent a minute or two to retrieve a jacket from her vehicle. No written policy was provided by the employer that stated the claimant was prohibited from leaving the home to retrieve an item from her vehicle. No care plan was provided which stated that neither of the clients the claimant was caring for could not have alone time for 15 minutes per day. Claimant's mistaken belief that she could retrieve a personal belonging from her car while her clients had alone time consistent with their care plans is not considered an incident of insubordination or any other type of substantial job-related misconduct. If anything, claimant's actions were an isolated incident of poor judgment and claimant is guilty of no more than "good faith errors in judgment." 871 IAC 24.32(1)(a). Instances of poor judgment are not misconduct. *Richers v. Iowa Dept. of Job Services*, 479 N.W.2d 308 (Iowa 1991); *Kelly v. IDJS*, 386 N.W.2d 552, 555 (Iowa App. 1986). If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer has failed to establish any intentional and substantial disregard of the employer's interest which rises to the level of substantial willful misconduct. As such, benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The January 21, 2021 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant remains otherwise eligible.



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Dawn Boucher  
Administrative Law Judge

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April 6, 2021  
Decision Dated and Mailed