

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JILL L O'MALLEY**  
Claimant

**APPEAL NO: 14R-UI-03488-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WHEELOCK INCORPORATED**  
Employer

**OC: 12/15/13**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's January 8, 2014 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. A hearing was initially held on February 11, 2014. The claimant did not participate at this hearing, but the employer did. A decision was issued affirming the representative's determination that disqualified the claimant from receiving benefits. The claimant appealed this decision to the Employment Appeal Board.

On March 31, 2014, the Employment Appeal Board remanded this matter to the Appeals Bureau for a new hearing. On April 22 another hearing was held. The claimant participated at the April 22 hearing. Paul Wheelock, the owner, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on June 25, 2013. She worked around 30 hours a week cleaning buildings. The claimant agreed she would be available to clean on Saturdays from 9:00 a.m. to 2:00 p.m.

In early December 2013, Wheelock was talking to the claimant on her cellphone. T. was in the car when the claimant talked to Wheelock. T. reported the claimant hung up on Wheelock. When Wheelock talked to the claimant about this incident, she told him that her cellphone had dropped their call. She denied she hung up on him.

Prior to December 14, the employer had not given the claimant any written warnings. The claimant had no understanding her job was in jeopardy.

On Saturday, December 14, the claimant was scheduled to clean at a hospice building. Wheelock drove by the hospice building at 8:58 a.m. and saw the claimant looking in the front office. It looked like she was trying to get in the building. Wheelock turned around to see if he could help her. By the time he turned around, the claimant was driving away from the building at 9:02 a.m. He did not have her phone number with him, so Wheelock drove to the office to call the claimant. Before Wheelock got to the office, the claimant called and left a message. She was upset that she could not get into the building and asked the employer to contact T., a co-worker in the building, to let the claimant in the building. Wheelock did not know the claimant had called and left a message, but he called her around 9:05 am.

During this conversation, the claimant was upset that T. had not waited for the claimant before she went into the building. The claimant told Wheelock she had waited to get into the building, but no one let her in. Wheelock understood the claimant would not go back to the building to clean. He reminded her she had agreed to be available to work 9:00 a.m. to 2:00 p.m. on Saturdays. He told her to go back to the building and he would pay her for work starting at 9:00 a.m. The claimant was still upset when their conversation ended. At the end of the conversation, Wheelock understood the claimant refused to go back to work that day.

Even though Wheelock understood the claimant would not go back to the hospice building to clean, she did. The claimant went back to the hospice building and got there around 9:20 a.m. She assumed Wheelock would either contact T. to let her in the building or he would let her in the building. The claimant waited until 9:35 a.m. before she sent Wheelock a text message. The claimant's message indicated she was outside and no one was around. She also told Wheelock she had been waiting since 9:20 a.m. and she had sent T. a message to let her in the building. The claimant's text stated that she assumed she was fired when no one let her in the building.

Wheelock did not immediately see the claimant's text messages. A few minutes after the claimant sent the 9:35 a.m. messages, Wheelock responded and said, "You told me you had things to do and were not coming back." The claimant was at the hospice building until 10:30 a.m. because her car would not start. No one let her in the hospice building to clean.

On Sunday, Wheelock sent the claimant a text that he would call and talk to her on Monday. On Monday, December 16, the employer told the claimant he decided it was best if they parted ways. The employer concluded he could not tolerate the claimant's refusal to work and her insubordination and disrespect she showed him on December 14 and a few weeks earlier.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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 Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. Iowa Admin. Code r. 871-24.32(1)(a).

On December 14, the claimant was understandably upset when she arrived at work before 9: a.m. and could not get into the building. She was still upset shortly after 9:00 a.m. when she talked to Wheelock. He was upset with her because he understood she was not going to work that morning after a co-worker did not wait for her and did not let her in the building. While the claimant and Wheelock engaged in a verbal phone confrontation that led the employer to understand the claimant was not going to work that morning, the claimant went back to the building to work. Again, no one let the claimant in the building so she could not work.

It was not unreasonable for the claimant to wait until 9:35 a.m. before she again informed Wheelock she could not get into the building to clean. Since the claimant went back to the hospice building to clean, she was not insubordinate on December 14. Even though an employee told Wheelock the claimant had hung up on him in early December, the claimant denied she had done this. Since T. did not testify at the hearing, the employer's reliance on information T. provided to him outside the hearing, is hearsay information and cannot be given as much weight as the claimant's testimony. The evidence does not establish the claimant was insubordinate or disrespectful to the employer in early December 2013.

The claimant used poor judgment when she talked to the employer while she was upset about not getting into the building to clean. Even if the clamant raised her voice at Wheelock, she did not commit work-connected misconduct on December 14, 2013. As of December 15, 2013, the claimant is qualified to receive benefits.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

**DECISION:**

The representative's January 8, 2014 determination (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons, but the evidence does not establish that she committed work-connected misconduct. As of December 15, 2013, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css