

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JESSICA GRABER**

Claimant

**APPEAL 21A-UI-05550-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ANNETT HOLDINGS INC**

Employer

**OC: 10/25/20**

**Claimant: Appellant (1)**

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

Iowa Code § 96.5(1) – Voluntary Quit

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-Finding Interview

**STATEMENT OF THE CASE:**

Annett Holdings Inc, the employer/appellant, filed an appeal from the February 3, 2021, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on April 26, 2021. The employer participated through Erica Nesbit, vice president of customer service and Brian Crous, customer service manager. Ms. Graber did not register for the hearing and did not participate. Employer's Exhibit 1 was admitted into evidence.

**ISSUE:**

Was Ms. Graber discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Graber began working for the employer on October 30, 2017. She worked as a full-time logistics sales representative. Beginning January 22, 2020, Ms. Graber began working as a full-time customer service representative. Ms. Graber's employment was terminated on October 20, 2020.

As a customer service representative, Ms. Graber assigned drivers to pick, transport and drop off loads, among other tasks. Ms. Graber was issued written warnings on March 12, May 20, June 24, September 1 and October 5, 2020 for entering incorrect information or not entering information into the employer's system. This resulted in drivers being late to pick up or drop off load, drivers going to wrong locations to pick up and drop off loads, and the employer charging their customers incorrectly. When the employer asked Ms. Graber why she continued to make these mistakes, Ms. Graber explained that she had forgotten to input the information or she was not able to get organized and keep up with the pace of the job or she explained that she did not understand why what she did was wrong.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Graber was discharged from employment for no disqualifying reason.

Iowa Code section 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job 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). 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).

In an at-will employment environment 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, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to

whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

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Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552 (Iowa Ct. App. 1986).

In this case, Ms. Graber was written up less than two months after she started her new role and she continued to be written up during nine months as a customer service representative. Ms. Graber never had a sustained period of time during which she performed her job duties to employer's satisfaction. Inasmuch as Ms. Graber did attempt to perform the job to the best of her ability but was unable to meet its expectations, no intentional misconduct has been established, as is the employer's burden of proof. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). No disqualification pursuant to Iowa Code § 96.5(2)a is imposed. Benefits are allowed.

Since Ms. Graber is eligible for benefits, the issues of repayment and chargeability are moot.

**DECISION:**

The February 3, 2021, (reference 01) unemployment insurance decision is affirmed. Ms. Graber was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.



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Daniel Zeno  
Administrative Law Judge

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April 30, 2021  
Decision Dated and Mailed

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