

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**BARBARA C MCKEE**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL 21A-UI-03224-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/29/20**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the January 13, 2021 (reference 01) unemployment insurance decision that found the claimant was not eligible for unemployment insurance benefits based upon her voluntarily quitting work. The parties were properly notified of the hearing. A telephone hearing was held on March 18, 2021. The claimant participated personally. The employer, Hy-Vee Inc., registered hearing representative Barbara Buss and witnesses Chance Duin and Robert Gasper. The administrative law judge reached Ms. Buss but was unable to reach either of the employer's witnesses at two separate telephone numbers that were provided. Ms. Buss did not participate in the hearing after learning that the witnesses for the employer were unavailable. The administrative law judge took official notice of the claimant's administrative 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 from approximately June 21, 2018 until November 20, 2020. She worked full-time as a room supervisor.

Claimant was an hourly employee and was scheduled to work until 2:00pm on November 20, 2020. Claimant had made arrangements to pick up her children after work on November 20, 2020.

At approximately 12:30 p.m., her supervisor, Caleb Kelsey, notified her that she was required to work past her regular 2:00 p.m. end time. This was less than two hours of notice. Claimant was unable to do so because she was responsible for picking up children after work. She explained this to Mr. Kelsey. Mr. Kelsey then informed her that she would receive a point as discipline if she failed to work beyond her scheduled end time. Claimant then responded that she would just leave early then if she was going to receive a point for not working overtime. Mr. Kelsey

then responded that she would receive two points if she left before 2:00 p.m. that day. Claimant left before 2:00 p.m. that day at approximately 12:30 p.m.

After she had left, she received a telephone call from Anthony Inbody, another supervisor, asking her to return to work. She advised that she would return for the remainder of her shift but that she still had to pick up her children after her scheduled shift end time and that the latest she could stay until was 3:00 p.m. Mr. Inbody informed her that he was accepting her resignation then. The claimant never offered a resignation and intended to return to work the following scheduled workday. She advised Mr. Inbody that she was not resigning. She was then discharged from employment by Mr. Inbody.

Claimant did not use profane language or threats of violence when she discussed the issues with Mr. Kelsey or Mr. Inbody. She was not subject to excessive absenteeism under the employer's written policy for missing part of her shift on November 20, 2020.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Claimant clearly had no intention to voluntarily quit, as evidenced by her telling Mr. Inbody that. As such, this matter shall be analyzed as a discharge from employment.

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.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Further, 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 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). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.*

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). Further, poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). 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).

Insubordination does not rise to the level of substantial misconduct if it is reasonable under the circumstances. The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.*, 367 N.W.2d 300 (Iowa Ct. App. 1985). See also *Boyd v. Iowa Dep't of Job Serv.*, 377 N.W.2d 1 (Iowa Ct. App. 1985). Misconduct must be substantial in nature to support a disqualification from unemployment benefits. *Gimbel v. Employment Appeal Bd.*, 489

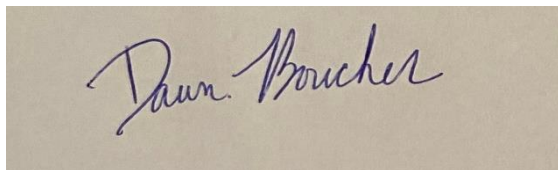
N.W.2d 36, 39 (Iowa Ct. App. 1992). The focus is on deliberate, intentional, or culpable acts by the employee. *Id.* Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

In this case, claimant's actions were not misconduct. Claimant was requested to work overtime past her scheduled shift end date with less than two hours of notice. She had other responsibilities to attend to after her scheduled shift end time and explained that to the employer. Those duties included caring for her children. It was reasonable under these circumstances that the claimant refused to work overtime. Claimant's actions in leaving her shift early because she was going to receive discipline no matter what time of day she left was not reasonable, however, it was an isolated incident of poor judgment. 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). Claimant is guilty of no more than "good faith errors in judgment." 871 IAC 24.32(1)(a).

As such, the employer has failed to establish any intentional and substantial disregard of the employer's interest which rises to the level of willful misconduct sufficient to disqualify the claimant from receipt of benefits. As such, benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The January 13, 2021 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.



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Dawn Boucher  
Administrative Law Judge

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March 19, 2021  
Decision Dated and Mailed

db/lj