

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

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**Appeal Number: 04R-UI-11034-H2T
OC: 11-30-03 R: 03
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 24, 2004, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 16, 2004. The claimant did not participate. The employer did participate through Nick Statler, Human Resources Representative. Administrative law judge Beth Sheetz issued a decision denying benefits on February 18, 2004. The claimant appealed the decision to the Employment Appeal Board who affirmed the decision denying benefits on April 2, 2004. The claimant appealed to the District Court who ordered a remand to allow the claimant to participate in the hearing on October 5, 2004. After due notice was issued an additional hearing was held on November 30, 2004 before administrative law judge Teresa K. Hillary by telephone conference call. The claimant did participate through the interpretation of Rosemary Paramo Ricoy and was

represented by Joe Walsh, Attorney at Law. The employer did participate through Audriana Cobes, Human Resources Associate.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a production worker full time beginning August 3, 1998 through December 4, 2003 when she was discharged. Peggy Beeler discharged the claimant for violating a company policy for refusing to carry out instructions as directed by her Supervisor and for refusing to perform a job as instructed by her Supervisor on November 26, 2003. The claimant was performing many different functions during her shift when her direct Supervisor asked her to help out at the scale. The claimant had previously performed the scale job. The claimant went to the human resources office to complain about the number of tasks she was being asked to perform. The claimant also went to the infirmary or nurse's office to seek treatment for a painful shoulder. While at the nurse's station the claimant was told by her Supervisor that she was suspended indefinitely for refusing to perform the scale job. The claimant did not refuse to perform the scale job; she just sought to complain through the union about her assignment to the job and to seek medical care from the nurse for a painful shoulder. While the chief union steward, Mike Larkin, did tell the claimant to return to work, before she could do so, Carol McBee told her that she was suspended indefinitely and she was not allowed to return to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant 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 Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer discharged the claimant and has the burden of proof to show misconduct. 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).

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. IDJS, 367 N.W.2d 300 (Iowa App. 1985). The claimant was willing to perform the job as she had performed it previously without problems. Prior to taking on the new task, the claimant sought to file a complaint through her union representative, as was her right, and to obtain medical treatment from the nurse's station, as was also her right. Before the claimant had a chance to return to work she was told she was suspended indefinitely. The Supervisor did not give the claimant a chance to return to work after seeking medical treatment and filing a complaint. The claimant's need for medical treatment makes her delay in going to the scale job reasonable under all the circumstances. The employer's evidence does not establish that the claimant deliberately and intentionally acted in a manner she knew to be contrary to the employer's interests or standards. There was no wanton or willful disregard of the employer's standards. In short, substantial misconduct has not been established by the evidence. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The December 24, 2003, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/kjf