

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ASHLEE M HIATT**  
Claimant

**APPEAL NO. 13A-UI-11379-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PILOT TRAVEL CENTERS LLC**  
Employer

**OC: 09/01/13**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from the October 2, 2013, (reference 01) unemployment insurance decision that allowed benefits. After due notice was issued a hearing was held on October 21 2013. Claimant participated. Employer did participate through Chris Elwood, Travel Center Manager. Employer's Exhibit One was entered and received into the record.

**ISSUE:**

Was the claimant discharged due to job-connected 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 cashier beginning on May 4, 2010 through September 4, 2013 when she was discharged. The claimant was alleged to have been rude to a customer on September 4, 2013. The claimant denied that she was rude to the customer. The customer wanted to use the employer's air service and got change from the claimant to do so. The claimant told him that he could go down the street to the Casey's store and use their air service for free. Mr. Elwood did not hear the conversation and relied on a report from Shelly the coffee hostess. The claimant had been warned previously about making racially insensitive comments.

**REASONING AND CONCLUSIONS OF LAW:**

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

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.

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.

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 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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." 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).

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, employer incurs potential liability for unemployment insurance benefits related to that separation. The employer did not establish that the claimant's comment was said in a rude or sarcastic manner. The claimant was trying to help the customer by pointing him to free services. The claimant was the only person at the hearing who heard the whole conversation. Under these circumstances the administrative law judge concludes the employer has not met their burden to prove disqualifying misconduct. Benefits are allowed.

**DECISION:**

The October 2, 2013, (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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