

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**LORELLE GREEN**

Claimant

**APPEAL NO: 20A-UI-03040-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WESTAR FOODS INC**

Employer

**OC: 03/15/20**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the April 6, 2020, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 6, 2020. The claimant participated in the hearing. Stacy Holtz, District Manager and Tim Spear, Employer Representative, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time general manager for Westar Foods (Hardees) from May 5, 2018 to February 15, 2020. She was discharged because she had to leave before her replacement arrived as her mother was in the hospital.

On February 15, 2020, the claimant was scheduled to work until 2:00 p.m. She texted District Manager Stacy Holtz at 1:30 p.m. that her closing manager had not shown up for her shift. Ms. Holtz called the claimant and said the closing manager was not supposed to be there until 2:00 p.m. and the claimant said she had changed the schedule. Ms. Holtz said she wanted to wait until 2:00 p.m. to see if the closing manager showed up. The claimant said the closing manager had already missed two shifts that week and had not called and she needed a closer. She explained to Ms. Holtz that her mom was taken to the hospital by ambulance the night before and her sister had called the claimant at work and said she needed to get to the hospital because her mother was not doing well. Ms. Holtz said she called another shift leader and both the claimant and Ms. Holtz needed to keep trying other stores. At 2:26 p.m. the claimant texted Ms. Holtz and said she had not had any luck and asked if she would call Jennifer. Ms. Holtz indicated she had not been able to find a replacement either. At 2:35 p.m. the claimant called Ms. Holtz and said she had to go and Ms. Holtz said if you leave, leave the keys on the desk and the claimant said okay. Ms. Holtz said you understand what I'm saying and the claimant said yes. The claimant left the keys with Jennifer Carter and left the building.

## 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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

The employer has the burden of proving disqualifying misconduct. *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 substantial and 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).

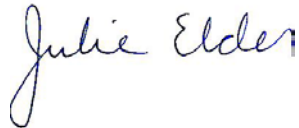
The claimant was placed in the untenable position of having to choose between remaining at her job or going to see her mom, who was failing, in the hospital. While the employer eventually found a replacement, the claimant did not know whether or not one would be found before she had to leave and was faced with the impossible choice of waiting for a replacement or going to

see her mom. The claimant's decision to leave to see her mom was understandable under the circumstances and she should not have been made to make the choice between seeing her ill mother in the hospital and keeping her job.

Under these circumstances, the administrative law judge must conclude the claimant's actions do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

**DECISION:**

The April 6, 2020, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.



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Julie Elder  
Administrative Law Judge

May 8, 2020  
Decision Dated and Mailed

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