

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ERICA J GLUBA**  
Claimant

**FAMILY RESOURCES INC**  
Employer

**APPEAL 16A-UI-06517-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/28/15**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 8, 2016 (reference 01) unemployment insurance decision that denied benefits based upon her discharge for insubordination. The parties were properly notified of the hearing. A telephone hearing was held on June 28, 2016. The claimant, Erica Gluba, participated and testified. The employer, Family Resources, Inc., participated through human resources director Karen Bruess.

**ISSUE:**

Was 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 full time as a domestic abuse legal advocate from September 9, 2015 until this employment ended on May 20, 2016, when she was discharged.

On May 19, 2016, at approximately 10:15 a.m., claimant received a call from the domestic abuse crisis line that there was a new client who needed services at the Clinton Police Department. Claimant asked if there was another advocate on duty who could take the call, as she had two clients already scheduled to come in and meet with her that day. The crisis line worker said she would check. At 10:39 a.m. claimant received a call from her immediate supervisor, Dustin DeWeerd, telling her she needed to go to the police station. Claimant explained she had two client meetings that day, could not be in both places at once, and asked how she should prioritize her tasks. Claimant and DeWeerd then got into a disagreement on the phone before the call was cut off. Claimant then called DeWeerd's immediate supervisor to report the conversation, as she was not happy with DeWeerd's behavior toward her. This call lasted approximately ten minutes. Claimant then went directly to the police department, approximately two minutes away, and assisted the new client. Claimant testified she never refused to assist the client and acted within the one hour response time set by the employer.

The following morning, May 20, 2016, claimant was notified by DeWeerd that her employment was being terminated. Prior to this incident claimant had received several warnings, including a performance improvement plan related to her overall performance and tardiness, but she had never been warned or disciplined for failing to follow a directive or failing to respond to a crisis call in a timely manner.

### **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.

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 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.

The conduct for which claimant was discharged was an isolated incident of poor judgment. Preferably, claimant would have immediately responded to the client at the police station once given the direction to do so by DeWeerd and then waited to address her ongoing concerns with DeWeerd and his supervisor until a later time in order to ensure the client was not in crisis any longer than necessary. However, claimant had never been warned about or disciplined for such behavior prior to this incident.

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. While claimant had received prior warnings about other issues, this was the first time she engaged in behavior of this nature. Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning.

**DECISION:**

The June 8, 2016 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

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