

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

ALLISON RITCHIE,
Claimant

**DIA APPEAL NO. 22IWDUI0147
APPEAL 22A-UI-04484**

IOWA WORKFORCE DEVELOPMENT,
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/23/22
Claimant: APPELLANT (2)**

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

STATEMENT OF THE CASE:

The Claimant/Appellant filed an appeal from the February 9, 2022 (reference 01) unemployment insurance decision that held Claimant ineligible for unemployment insurance benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 22, 2022. Claimant, Ms. Allison Ritchie, participated personally and testified. The Employer, Iowa Workforce Development (IWD), appeared through counsel, Ms. Brooke Axiotis. IWD called Mr. Kevin Melcher, a Call Center Manager, Ms. Kimberly Stoker, a member of the IWD Human Resources department, and Mr. Jeremy Ritchie (no relation to Claimant), the District Manager for the eastern side of Iowa for IWD job centers, as witnesses. The Claimant submitted Exhibits 1 through 6 and IWD submitted Exhibits A through O. All of the parties' exhibits were admitted without objection.

ISSUES:

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 full time with IWD in various capacities starting in 2002, and her last position was described as a Workforce Advisor by the IWD fact-finding investigator. (Exhibits 3 and N). Claimant was employed for a set work schedule (Monday through Friday from 8:00 a.m. to 4:30 p.m.) and would work overtime as needed. Claimant last worked a full day at her job site on November 18, 2021. Claimant was separated from employment on December 7, 2021, through discharge (the parties disagree as to whether the discharge was proper or wrongful). Claimant had never received a warning or discipline during her tenure with IWD until the matter at hand.

Due to the COVID-19 pandemic, IWD was inundated with unemployment insurance (UI) claims. Consequently, field staff were redirected to help with administrative tasks which were normally not part of their job duties. Claimant was one such staff member. According to an email dated February 21, 2021, by IWD Director, Ms. Beth Townsend, IWD staff "have essentially done a year's work[] every single month since last March and you continue to do so each and every month." (Exhibit 2). In early October of 2021, Claimant began assisting manual processing of

some UI applications. Approximately 70% of all applications are processed automatically without staff input or oversight. However, the remaining applications require an IWD staff member to process the application manually.

Previously, on April 25, 2020, IWD Director Townsend sent an email to all IWD employees:

Under NO circumstances should you open, adjust, review, alter or affect in any way claims of people who are your friends, family members or neighbors or an individual who asks you to do something for them as a favor. If those claims or questions come to you, you must immediately decline such requests and refer them to another employee or your supervisor. Taking such action is viewed as unauthorized access to our files and will lead to disciplinary action up to and including termination. Unauthorized access is [a] nonnegotiable offense, per our work rules.

I know we all want to help people we care about, and people you know may ask you for "special help." You cannot use your access for our family and friends or neighbors UI accounts to help them. Instead, please refer the question or issue to a co-worker or supervisor with no connection to the individual to resolve the issue.

(Exhibit J).

IWD has a "Work Rules" handbook. (Exhibit C). The handbook outlines standards of conduct for employees. It is not an exclusive explication of all standards because other standards of conduct may be applicable due to the relevant statutes, federal regulations, or state administrative rules, etc., applicable to IWD. The handbook informs employees that IWD "may take disciplinary action up to and including discharge for a violation of a Division, Bureau, or position work rule, policy, or procedure." Further, "[i]t is the personal responsibility of each IWD employee to know, understand, and follow all applicable standards of conduct. IWD may take disciplinary action up to and including discharge for a violation of an applicable standard of conduct."

The handbook provides a list of "General Standards of Conduct." Included in the standards are a requirement that employees "follow all applicable . . . guidance." Moreover, employees must "comply with all standards of conduct including but not limited to . . . work rules, policies, procedures, and standard practices."

Additionally, the handbook has a section entitled "Honesty and Integrity." "An employee must perform the employee's work with the utmost integrity and highest of ethical standards."

Dishonesty will not be tolerated. An employee must be honest when providing information to employees and customers. This includes providing accurate and complete statements and documentation. An employee's dishonesty by omission will be treated in the same manner as an employee's express misrepresentation.

Employees were also prohibited from a number of activities, including "[p]roviding services or assistance to family members or individuals with whom they are personally involved, or would lead to an appearance of a conflict of interest." "No employee shall participate in taking, adjudicating, processing, accessing or be involved in the claim of a relative, friend, co-worker or personal associate."

IWD has a progressive discipline policy, but also reserves the right to use any and all disciplinary measures. Specifically listed as an act or omission that will result in immediate

termination was the "[u]nauthorized access, possession, disclosure, or distribution of information that is confidential under applicable state or federal law or IWD policy."

On July 20, 2021, Claimant signed her acknowledgement of the handbook. The acknowledgement page stated that additional information and policies may be implemented from time to time. (Exhibit D).

On September 30, 2021, Claimant sent an email to her supervisor, Mr. Jeremy Ritchie, asking for "refresher training on processing incoming claims." In response, Ritchie responded by email and attached two training links. (Exhibit G). The very first slide of one presentation stated:

Do not process claims for individuals that you know. This includes:

- Family Members
- Neighbors
- Friends
- Anyone that would/could appear to others as a conflict of interest.

(Exhibit H). Claimant also completed IWD "End User Training" online. (Exhibit I).

On October 27, 2021, Claimant accessed her daughter's application. (Exhibits L and M). According to Claimant, she was manually processing applications to match employers' account identification numbers or addresses for correct processing. In a written statement to Jeremy Ritchie dated December 3, 2021, Claimant described her work as "submitted from web applications in LOTUS to submit for processing during a work project of submitting batches of 'straight Iowa claims.'" Later, Claimant described the work as "if a customer enters new banking information into a new application it enters in the dbro system automatically when the claim is sent from LOTUS after confirming employer account number to submit to system." (Exhibit 5). Apparently, recipients of UI benefits can have the money loaded onto a debit card or it can be direct deposited into their financial institution. Thus, the banking or financial institution information must be accurate. Apparently, there was a problem with some business employers and financial institutions being associated with fraudulent activity and identity theft for IWD. (Exhibit K). It was during Claimant's manual processing of applications that she accessed or modified her daughter's application.

On November 18, 2021, Claimant asked Mr. Ritchie to look into her daughter's unemployment insurance claim. (Exhibit 5). Claimant stated she did this pursuant to established practice at IWD – to reach out to a supervisor for issues related to family members. Later, Mr. Ritchie asked Claimant if she changed banking information on a particular claim (she later learned it was her daughter's claim). Claimant denied that she had done so. Mr. Ritchie showed Claimant something called the "KLOG."¹ This log screen showed "ARITCHIE" on it indicating Claimant had at least accessed her daughter's electronic file or account. Claimant asserted in her grievance that she manually processed the new application on October 27, 2021 "and upon submitting the incoming application to the claim system to begin the overnight processing, that would have updated the banking information from what the customer entered on their online application themselves." Claimant then stated she "did not modify any banking information." (Exhibit 5). It is unclear what the assertion denying any modification means – Claimant did something with her daughter's account, even if it was just accessed to check banking information. In her own words, Claimant states she "manually processed" her daughter's application "to the claim system to begin overnight processing." IWD issued a letter during the fact-finding investigation into Claimant's unemployment insurance benefits claim. (Exhibit 6).

¹ "KLOG is an electronic continued UI claims filing system utilized by IWD." (Exhibit N, footnote 2).

The letter states: "If the system can match and determine the last employer, as shown on WAGE, and the dates appear correct in relation to the wages, then the system will auto process the claim." Further, "[i]f someone manually processes the claim, then it will have his or her username on KLOG next to the transaction for DIR DEPOSIT DATE VERIFIED."

On November 19, 2021, Claimant was placed on administrative leave while the matter was investigated by IWD. (Exhibit A). On December 7, 2021, Claimant was terminated. (Exhibit B). The basis for the termination was Claimant "accessed a Family member[']s Unemployment Insurance claim and modified the banking information on October 27, 2021." IWD found Claimant violated the work rules regarding honesty and integrity. Further, Claimant violated the rules prohibiting involvement in a family member's claim as well as the general standard of conduct. (Exhibit N).

Claimant filed a grievance regarding her termination. (Exhibits 5 and N). That matter is still, apparently, pending on appeal for a hearing scheduled in November of 2022. (Claimant testimony).

Additionally, Claimant filed for unemployment insurance benefits on January 23, 2022. Benefits were denied in a decision dated February 9, 2022. Claimant complained about the accuracy of the fact-finding investigation relative to the benefits decision, because no warnings were given, contrary to the fact-finding notes. (Exhibits 3 and 5). Those complaints are not very probative of the issue(s) here.

At the hearing the parties clarified some of the facts. Claimant testified that she was aware of the policy prohibiting any interaction with a family member's claim through her annual training. She was also aware of the work rules handbook.

However, Claimant strenuously and steadfastly denied changing or modifying her daughter's banking information. Rather, the issue arose, according to Claimant, from her assignment to, essentially, a data processing task. Claimant admitted she unknowingly accessed her daughter's application in order to verify, and not change, banking information, and did not even realize she had done so until Mr. Ritchie informed her of the fact on November 18, 2021. Claimant testified she accessed her daughter's information on October 27, 2021, unaware that it was her daughter's application. She was manually processing applications to make sure the employer's tax identification number, account, and address were correct in the LOTUS notes system. Claimant does not know her daughter's social security number and was not looking at the name of the applicants on the new applications she was processing. Customers would choose a debit card or direct deposit of their benefits on the application and provide employer information. Once the employer information was checked, Claimant would "submit" the application for overnight processing to the claims system. Again, these were Iowa employer new claim applications.

Claimant testified her understanding was that she was accused of changing that information for her daughter's application and she denied doing so. According to Claimant, in the computer screen, the customer's social security number comes up first. Claimant would type in the social security number in the mainframe system (it would have been a blank template, no name). Claimant would then go to the wage screen (apparently, the DBRO screen) and also go to the bottom of the application where the banking information was located to match the information. (Exhibit O). Claimant would not enter the applicant's name. Rather, the name and requested information are prepopulated by the customer while filling out the application. If the system could not automatically read the information or there was employer information that would not match the IWD information (in order to "autoprocess"), then, apparently a list would be

generated every day for the applications that would have to be manually entered. The list of applications to be manually processed could number in the hundreds for the day. Claimant would only look at a name if the discrepancy lied therein, but that would not have happened with brand new claims or applications, such as her daughter's application. Further, Claimant's written statement during the investigation indicated IWD staff were informed over a year earlier that they would no longer have access or authority to change banking information on behalf of customers due to the concern of fraudulent claims. (Exhibit 5).

Claimant later learned that her daughter's application had not been autoprocessed because her daughter's employer had bought another company causing confusion as to the correct employer identification information. Her daughter's name was not on the "DBRO" screen; rather, it was only on the top of the application, and she scrolled down past it to locate the employer information. According to Claimant, there was no reason for her to check the customer's name for her assigned task (putting aside for the moment the policy to prohibiting working on claims submitted by family members). However, Claimant admitted she should have checked the names on the application to ensure she did not run afoul of the prohibition. Claimant stated "she got on a roll" manually processing the applications and just did not check. As stated above, according to Claimant, her daughter's employer had been bought out by another company and Claimant did not recognize the employer's name.

Claimant had only been performing the manual data entry on new applications for employer information for less than a month when the incident with her daughter's application occurred. She had also worked as a fact-finding investigator for IWD. It was in September of 2021, when IWD reassigned her to process applications. She testified she reviewed or manually processed thousands of applications, including her daughter's, over that brief period of time. Other than the issue at hand, no mistakes were ever brought to her attention. In fact, in over 19 years working for IWD, Claimant had never been warned, suspended, or otherwise disciplined ever. Her annual work evaluations rated Claimant as meeting or exceeding expectations by IWD management for every year given. (Exhibit 4). Mr. Ritchie acknowledged he did not question Claimant's integrity ever until this incident.

This incident did not result in any windfall to Claimant's daughter. (Exhibit 1). She did not receive more benefits than she was entitled to nor were benefits paid for a longer duration than appropriate. The daughter's statement included a number of additional facts. The daughter submitted the application on her own. She selected direct deposit of her unemployment benefits. She initially did not see the deposit of her benefits because it was deposited into a prepopulated or auto-filled routing and account number (from the daughter's computer). She contacted IWD about her unemployment benefits and it was discovered the benefits were paid to a different banking account (she had two accounts). She contacted Claimant to speak with Mr. Ritchie because she did not notice the banking account discrepancy.

As an aside, Claimant testified she believed her daughter had applied previously for unemployment insurance benefits a year, or more, earlier. Although Claimant had used the "DBIN" screen, which would have shown previous claims by a customer, Claimant testified that screen had nothing to do with her work in October of 2021, so she did not, apparently, check it.

The troubling or unexplained issue with Claimant's daughter's application is that it shows under "Document History" that Claimant opened or entered the application at 9:52 a.m. on October 27, 2021 (it says "Created document" which means the application was opened according Claimant). Then the application was opened or entered by another worker at 10:23 a.m. on October 27, 2021, and the other worker is listed as the person that last modified the application. (Exhibit O). Claimant could not explain the "Document History" record for the other employee –

she did not know what the next step was in the process. The "Claim Data Change Log," the KLOG, reflects Claimant did something with the direct deposit account and then verified the direct deposit date at 9:53 a.m. on October 27, 2021. (Exhibit M; see also Exhibits L and 6).

Mr. Jeremy Ritchie testified for IWD. In January of 2016, he began supervising Claimant. Mr. Ritchie testified he became aware of the October 27, 2021, incident when Claimant brought an issue related to her daughter's unemployment claim and asked him to look into it on November 18, 2021. He saw Claimant's name in the KLOG for her daughter's claim. He contacted his supervisor and the IWD Human Resources department. IWD placed Claimant on administrative leave the next day and the investigation commenced.

IWD made the determination for termination because it found Claimant's conduct, i.e. accessing or modifying her daughter's unemployment insurance claim application, to be an egregious violation. Claimant's conduct negatively reflected on IWD's integrity and adversely affected the general public's (or individual taxpayer's) trust in the unemployment system. It gives the appearance of impropriety or preferential treatment based on an association with an IWD employee. The termination was made through consultation with IWD senior leadership and its Human Resources department. It is noted that Claimant had previously made requests regarding her daughter's claims filed in previous years and it was handled by a neutral IWD employee. Thus, Claimant was aware of the policy preventing her from accessing her daughter's claim(s). Further, as noted previously, the prohibition on accessing family member claims (and others) would be part of routine training and also found in the IWD policy library. When friends and family reach out to IWD employees, the employees know to reach out for others to handle any issues, to step back, and take no action. Prior to this matter, Mr. Ritchie did not question Claimant's ability or integrity. However, he felt Claimant acted intentionally in this matter (he found it unlikely that Claimant did not know the application was her daughter's application). However, Mr. Ritchie had no explanation as to why Claimant would then bring to his attention the next month her daughter's claim where he could or would see Claimant previously accessed the application.

Mr. Kevin Melcher testified for IWD. He has worked there a little over six years. Previously, he was a benefits manager. He is aware of friends and family contacting IWD employees for help with their UI claims. Employees are to refer questions to a dedicated phone line and or contact their supervisor to handle the matter. IWD is to be a neutral party between employees and employers. Any hint of preferential treatment is anathema to that role and institutional integrity. In his prior position, he knows that employees do not accidentally enter into a claim (via DBRO, the main access point into the mainframe system) – rather, it takes an intentional, volitional act. Typically, when accessing a claim, the first thing one would notice would be the social security number, then the name and address of the person. An application will first list notes, then name, etc. Mr. Melcher believes that the daughter's prior year's claim would have been available on the mainframe and would usually then be checked. It is possible for an employee to go into a claim or application and leave after making changes without further processing the claim, but it is highly irregular. Mr. Melcher was unaware of why someone would go into a claim to update it without processing it for submission to the mainframe. Mr. Melcher testified that Claimant did not process the claim, but did make a change to the application regarding banking. Another employee actually processed the application. Mr. Melcher testified that he could not specify what was changed because the old information is written over or not recoverable (apparently, like an unsaved draft). However, he also did not issue the directives for Claimant's duties for verifying employer information on manually processed applications. Nonetheless, Mr. Melcher was confident that Claimant's proclaimed instructions differed from the instructions his office gave to workers for manually processing applications. Turning to the record, the KDDI screen is the banking information screen which provides the direct deposit information. (Exhibit

L). It showed the banking information for Claimant's daughter was last updated on October 27, 2021, according to Mr. Melcher.

Ms. Kimberly Stoker, Human Resource Professional 1, has worked for IWD since October of 2019. Ms. Stoker has worked in Human Resources for the State of Iowa since 2008. Ms. Stoker testified IWD conducted multiple trainings for field staff helping out during the COVID-19 pandemic. Moreover, it was stressed that IWD employees should not even have access to family or associates IWD information, including emails. The size and scope of the pandemic made it imperative that IWD show no preferential treatment according to Ms. Stoker. Known family members or associates were to be referred to an 800 number. Many people affected by the pandemic were reaching out to anyone working for IWD due to long wait times given the sheer volume of claims.

Ms. Stoker explained that the unemployment "tax" is something everyone was equally entitled to as a benefit, and any preferential treatment would question the integrity of the entire program. Simply accessing a known person's claim by an IWD employee was a terminable offense. There is no requirement to impose any lesser action (e.g. coaching and counseling) or lesser sanction (e.g. suspension).

Here, Mr. Ritchie contacted Human Resources after he went into Claimant's daughter's claim and saw Claimant's credentials. The KLOG showed Claimant entered and modified her daughter's information according to the investigation. Moreover, the investigation found that applications were not supposed to be processed in a piecemeal fashion; rather, the entire application was to be processed.

Ms. Stoker confirmed Claimant was terminated December 7, 2021. Ms. Stoker cannot typically determine an IWD employee's specific intent during an investigation unless it is made known. However, intent can also be deduced or inferred from an employee's actions. Disciplinary sanctions depend on the particular case and the findings made therein. Ms. Stoker believed 99% of those IWD employees who accessed prohibited claims resulted in termination (it should be noted that this does not appear to be a common or widespread problem for IWD). IWD Human Resources presents a summary of their findings and makes a recommendation to IWD senior leadership in disciplinary matters. Any termination is supported by senior leadership before it is implemented. Typically, Human Resources does not make findings of intent by IWD employees, unless intent is explicated in the findings. Ms. Stoker believed Claimant intentionally and knowingly accessed her daughter's application (or claim) on October 27, 2021. Ms. Stoker could not explain why Claimant would bring her daughter's account to the attention of Mr. Ritchie on November 18, 2021, but speculated it was an unwitting error on Claimant's part.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the Claimant was not discharged from employment for a disqualifying reason. Benefits are allowed.

Effective July 1, 2022, the Iowa Legislature amended Iowa Code § 96.5, in part. IA LEGIS 1136 (2022), 2022 Ia. Legis. Serv. Ch. 1136 (H.F. 2355) (WEST). Pertinent here, the Legislature changed, in part, the definition of "misconduct."

For the purposes of this subsection, "misconduct" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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.

Iowa Code § 96.5(2)(d). The new definition of "misconduct" includes 14 specific circumstances which result in the denial of or disqualification from unemployment insurance benefits. One of those specific circumstances disqualifying benefits occurs when there is a "[k]nowing violation of a reasonable and uniformly enforced rule of an employer." Iowa Code § 96.5(2)(d)(2).

As noted above, the new statute became effective July 1, 2022. The underlying operative facts in this case occurred prior to that date. Because this statute affects substantive rights, and not just a procedure or remedy, it is applied prospectively only. *Anderson Fin. Servs., LLC v. Miller*, 769 N.W.2d 575, 579 (Iowa 2009) ("If the statute is substantive, we presume it operates prospectively only unless 'by necessary and unavoidable implication,' a legislative intent that it be applied retrospectively clearly appears. . . . If the statute is remedial, we presume a retrospective operation and employ a three-part test to determine if retroactive application is consistent with legislative intent.") (citations omitted). See also *Moose v. Rich*, 253 N.W.2d 565 (Iowa 1977) (holding worker's compensation statutory amendment was substantive, not remedial, and applied only prospectively). Accordingly, the statutory scheme in place before the amendment is utilized for this analysis.

Claimant was discharged from employment. Iowa Code § 96.5(2)(a) previously provided:

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).

Unemployment statutes "should be interpreted liberally to achieve the legislative goal of minimizing the burden of involuntary unemployment." *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6, 10 (Iowa 1982). The employer has the burden of proof in establishing disqualifying job misconduct. *Id.* at 11. "The purpose of our unemployment compensation law is to protect from financial hardship workers who become unemployed through no fault of their own. See Iowa Code § 96.2. We are to construe the provisions of that law liberally to carry out its humane and beneficial purpose. . . . Conversely, we are to interpret strictly the law's disqualification provisions, again with a view to further the purpose of the law." *Bridgestone/Firestone, Inc. v. Emp. Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997) (citations omitted). The misconduct must be "substantial." *Greenwell v. Emp. Appeal Bd.*, 879 N.W.2d 222, 227 (Iowa Ct. App. 2016); *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).

Further, the issue is not whether the employer made a correct decision in separating employment with a claimant, but whether the claimant is entitled to unemployment insurance benefits. "What constitutes misconduct justifying termination of an employee, and what is misconduct which warrants denial of unemployment benefits are two separate decisions.' 'Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits.'" *Timmons v. Emp. Appeal Bd.*, 898 N.W.2d 203 (Iowa Ct. App. 2017) (Table; internal quotations omitted).

In considering what amounts to misconduct under the statute and administrative rules, we must (1) liberally construe the statute in light of its policy goals, . . . (2) place the burden of proof of showing disqualification on the employer, . . . and (3) narrowly interpret any statutory provision related to disqualification[.]

Irving v. Emp. Appeal Bd., 883 N.W.2d 179, 201 (Iowa 2016) (citations omitted).

The . . . standard for misconduct disqualification is generally thought to be quite demanding. It certainly exceeds the standard required in most cases for just-cause termination from employment. A handful of states have chafed under the rule and promulgated statutes or regulations departing from it.

Id., 883 N.W.2d at 197 (citations omitted). See amended Iowa Code 96.5.

Here, Claimant knew about the prohibition against accessing her daughter's application. Claimant intentionally accessed her daughter's application while not knowing it was her daughter's application. Claimant negligently accessed her daughter's application – her daughter's information was available to her had she merely taken the time and effort to look at the information.

However, it is unclear whether Claimant actually changed the banking information for her daughter. IWD correctly points out that the timing of the application and its access is suspicious. The application was apparently "created" by Claimant's daughter on October 27, 2021, at 8:40 a.m. (Exhibit O). It is then accessed by Claimant at 9:52 a.m. and then by another IWD employee at 10:23 a.m.

Additionally, the computer record indicates some change may have been made – the KLOG indicates "ARITCHIE" for October 27, 2021, associated with direct deposit entries. Yet, one of the entries is "DIR DEPOSIT DATE VERIFIED 2021." (Exhibit M). It is unclear if this identification stamp for Claimant would have been made for merely verifying a financial institution account number (as Claimant apparently contends) or if such an electronic denotation would be made only if a change was enacted (as Mr. Melcher's testimony seems to indicate). Presumably, this issue could be resolved by simply comparing the KLOG screen for other applications manually processed by Claimant to her daughter's KLOG screen for discrepancies.

However, the printed application for Claimant's daughter indicates another employee actually submitted the application for automatic processing. (Exhibit O). Yet, *that other employee is not listed on the KLOG excerpt at all.* (Exhibit M). This discrepancy is unexplained – *how does another IWD employee do something with or to an application and there is no record of it on the KLOG.* Additionally, also missing is the ability to look at the information submitted originally online by Claimant's daughter for comparison with Exhibit O.

Finally, Claimant's daughter states her banking information was correct and "[n]o modifications were made to my record by any IWD staff member or manager[.]" (Exhibit 1). Claimant testified she changed nothing on her daughter's application and did not even know it was her daughter's application. Claimant's position is unrebutted except for the electronic record which, as noted above, has some missing or unexplained information.

It was conceded at the hearing that the IWD investigation cannot determine intent unless it is reflected in documentation or verbalized in some fashion. While possible that Claimant forgot or did not know about the KLOG record, it seems highly unlikely that she would direct Mr. Ritchie to her daughter's claim on November 18, 2021, if she knew she had accessed it.

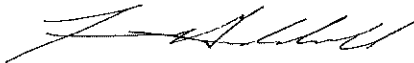
Regardless, it is undisputed that Claimant unwittingly accessed a family member's application (or claim). That was a violation of IWD employment rules and could serve as a basis for termination. But it is insufficient, without more, to disqualify Claimant from unemployment benefits. The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). This is not like the case of *Avenarius v. Emp. Appeal Bd.*, 842 N.W.2d 387 (Iowa Ct. App. 2013) (Table) ("*Avenarius* had been using the company gas card for personal use. She calculated over \$4000 in gas purchases had been made over the past year. The usage was not caught earlier because *Avenarius's* daughter, Tamara, was doing the daily bookkeeping and paying the invoices without proper documentation from *Avenarius.*") nor like *Diaz v. Iowa Emp. Appeal Bd.*, 839 N.W.2d 676 (Iowa Ct. App. 2013) (Table) ("*Diaz*, a twenty-year employee who as working on an FBI project with access to FBI information, and who had previously undergone a FBI background check, did not inform her employer of her drug charges in part because of embarrassment, but also in fear of losing her job."). This is also not a case of "willful or wanton disregard of an employer's interest." *Cf. McClure v. Walgreen Co.*, 613 N.W.2d 225, 230 (Iowa 2000) ("We have defined 'willful and wanton' in the context of this statute to mean that "[t]he actor has intentionally done an act of unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm

would follow, and which thus is usually accompanied by a conscious indifference to the consequences.”) (quotation omitted).

When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. On this record, Claimant did not intentionally access her daughter’s application to secure an improper benefit. 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). Claimant has never been disciplined before in 19 years of service – this was not a recurrent event. There is no evidence that Claimant ever handled or accessed her daughter’s prior unemployment claims, either. Ultimately, Claimant inadvertently or negligently accessed her daughter’s application in violation of IWD rules. That is not disqualifying misconduct due to a “wrongful intent or evil design,” that is simply a mistake.

DECISION:

The February 9, 2022, (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.



Forrest Guddall
Administrative Law Judge
Iowa Department of Inspection and Appeals
Wallace State Office Building, Third Floor
Des Moines, IA 50319

August 31, 2022

Decision Dated and Mailed

FG/aa

CC: Allison Ritchie, Claimant (by first class mail)
Iowa Workforce Development, Employer (by first class mail)
Brooke N. Axiotis, IWD counsel (email)
Joni Benson (email)

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.