

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALYSSA STECHER
Claimant

APPEAL 20A-UI-08520-J1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PROFESSIONAL FOOT & ANKLE
Employer

OC: 05/17/20
Claimant: APPELLANT (2)

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

STATEMENT OF THE CASE:

On July 19, 2020, the claimant filed an appeal from the July 14, 2020, (reference 01) unemployment insurance decision that denied benefits based on misconduct. The parties were properly notified about the hearing. A telephone hearing was held on August 31, 2020. Claimant participated. Employer did not participate.

ISSUE:

Did claimant commit misconduct at work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on May 4, 2020. Claimant last worked as a full-time office help. Claimant was separated from employment on May 20, 2020, when she was told by the owner, Dr. Sehl that she was not working out and was discharged. Dr. Sehl told her that there were reports of her reading at work, and not answering phones during her lunch hour. That her employment was not working out. Claimant testified that her trainer, Ida (last name unknown), told her it was ok to read at work and not to answer the phone at lunch hour. Claimant had not been given any warnings or reprimands prior to her discharge.

REASONING AND CONCLUSIONS OF LAW:

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 to prove the claimant was discharged for job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer made the correct decision in ending claimant's employment, 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 justifying termination of an employee and misconduct warranting denial of unemployment insurance benefits are two different things. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence is not 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). 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 evidence in the record establishes a discharge for no disqualifying reason. The employer was dissatisfied with claimant's work. Poor work performance is not disqualifiable misconduct.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The July 14, 2020, (reference 01) unemployment insurance decision is reversed. Benefits are awarded, provided she is otherwise eligible.



James F. Elliott
Administrative Law Judge

August 31, 2020
Decision Dated and Mailed

je/mh