

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MERRY F FINLEY**  
Claimant

**MOSAIC**  
Employer

**APPEAL 18A-UI-11960-CL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/18/18**  
**Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the December 7, 2018, (reference 01) unemployment insurance decision that allowed benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on January 2, 2019. Claimant participated personally. Employer participated through unemployment insurance consultant Amanda Rivera, human resources manager Shanda Hiatt, human resource generalist Vicky Hernandez, and direct support Dina Auld. Employer was represented by Lesley Buhler. Employer's Exhibits 1 through 8 were received. Official notice was taken of the administrative record.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on April 1, 2012. Claimant last worked as a full-time direct support associate. Claimant was separated from employment on November 19, 2018, when she was terminated.

Employer has a policy prohibiting sleeping at work. Claimant was aware of the policy.

On April 9, 2018, claimant was given a written warning for sleeping while on duty.

On May 30, 2018, claimant was given a final, written warning for sleeping while on duty.

On October 30, 2018, claimant requested intermittent Family and Medical Leave Act (FMLA) leave based on her health condition of diabetes. The medical certification that accompanied the request was incomplete, so employer requested further clarification.

On November 10, 2018, claimant was working when she began experiencing low blood sugar. Claimant ate an apple but nevertheless suddenly became very tired and fell asleep in a chair at the work site. Claimant slept for over an hour. Claimant's co-worker attempted to wake her. Claimant responded, but did not wake up. The co-worker alerted the on-call supervisor of the situation. The supervisor, Dina Auld, came to the work site and observed claimant sleeping in a chair. Auld woke claimant on her second attempt. Claimant told Auld she was experiencing low blood sugar and it caused her to fall asleep. Auld observed claimant's hands shaking. Auld asked claimant if she had done anything to correct the problem and claimant stated she had eaten an apple. Claimant then continued working for a little less than an hour until Auld sent her home.

On November 15, 2018, claimant's medical provider provided the clarification employer sought in regard to her request for FMLA.

On November 19, 2018, employer terminated claimant's employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

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

Iowa Code § 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 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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (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. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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 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). 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).

Claimant credibly testified about her diagnosis with and side effects of diabetes. Claimant informed employer of the condition shortly before she fell asleep at work on November 10, 2018. Claimant unsuccessfully tried to regulate her blood sugar before she fell asleep that day. Auld's observation of claimant's shaky hands supports claimant's contention that her blood sugar was low.

It is employer's burden to establish claimant was terminated for misconduct. Misconduct must be "willful." The administrative law judge finds claimant fell asleep at work because of a medical condition. Thus, her conduct was not intentional. Employer is correct when it asserts that claimant's conduct caused several safety issues for all involved. However, 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).

Employer did not establish claimant was terminated for misconduct. Therefore, benefits are allowed. The issues regarding overpayment are moot and will not be discussed further in this decision.

**DECISION:**

The December 7, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Christine A. Louis  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

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Decision Dated and Mailed

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