

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KELLY NIMS
Claimant

ABCM CORPORATION
Employer

APPEAL 21A-UI-08778-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/10/21
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On March 25, 2021, claimant, Kelly Nims, filed an appeal from the March 16, 2021, reference 02, unemployment insurance decision that denied benefits based upon the determination the employer, ABCM Corporation, discharged her for violation of a known company rule. The parties were properly notified about the hearing held by telephone on May 25, 2021. The claimant participated personally. The employer participated through Human Resource Coordinator Sarah Townsend. Additionally, Chief Administrative Law Judge Nicole Merrill observed the hearing, but did not participate. The Employer's Exhibits 1 through 7 were admitted into the record.

ISSUE:

Did the employer discharge the claimant for job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a dietary cook beginning on March 30, 2007, and was separated from employment on December 9, 2020, when she was discharged.

On December 6, 2020, claimant allowed her dog into the kitchen and dining room areas of the facility. She also touched the dog and continued to prepare food thereafter without washing her hands. Claimant had been cautioned previously about allowing animals in the food preparation and dining areas. Employer has at least one animal residing at the facility, and that animal is also not allowed in the food preparation and dining areas.

On December 9, 2020, claimant's employment was terminated. Claimant had two prior disciplinary warnings, though those incidents were not similar in nature to the final incident.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

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.

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).

Claimant's actions violated the standards of behavior that the employer has a right to expect from its employees. Claimant knew animals were not allowed in food preparation and eating areas. While claimant asserts the final incident merely evidenced a single incident of poor judgment on her part, the employer has demonstrated that claimant's actions violated a known policy, for which she had been warned in the past. This constituted violation of a reasonable expectation on the employer's part for an employee working in food preparation for a health care setting and shows a deliberate disregard for the interest of the employer. As such, benefits are denied.

DECISION:

The March 16, 2021, reference 02, unemployment insurance decision is affirmed. The claimant was discharged from employment for job-related misconduct. Benefits are withheld until such time as she has worked and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



Alexis D. Rowe
Administrative Law Judge

June 7, 2021
Decision Dated and Mailed

ar/scn