

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TAMARA POWELL
Claimant

APPEAL 22A-UI-06430-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACP OF DELEWARE INC
Employer

**OC: 02/13/22
Claimant: Appellant (1)**

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:

On March 14, 2022, Tamara Powell (claimant/appellant) filed an appeal from the March 4, 2022, reference 01, unemployment insurance decision that concluded she was not eligible for benefits due to disqualifying misconduct. A telephone hearing was held at on April 21, 2022 pursuant to due notice. The claimant, Tamara Powell, participated and testified. The employer ACP of Delaware Inc., participated through Kimberly Port, Human Resources Director. Claimant's exhibit A was offered and admitted. The administrative law judge took official notice of the administrative record.

ISSUE:

Was the claimant discharged from employment for disqualifying job related misconduct?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Claimant began working for employer on September 5, 2017. Claimant last worked as a full-time cost accountant. Claimant was separated from employment on February 14, 2022, when she was discharged after admitted to surreptitiously recording hours of her supervisor's private conversations with her cell phone recorder. The claimant and her supervisor had offices next to each other. The claimant alerted her employer that not all employees were wearing masks in the office. The employer alerted these employees to the employer's policy and the employees complied with the mask directive. The claimant was concerned that some employees including her supervisor were saying things about her during their private conversations. The claimant recorded hours of conversations that were private and occurred between other co-workers within the confines of their respective offices. The claimant acknowledged that she engaged in this activity and felt justified because she thought some of the private conversations were about her.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes claimant was discharged from employment for disqualifying misconduct.

Iowa Code section 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.

871 IAC 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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

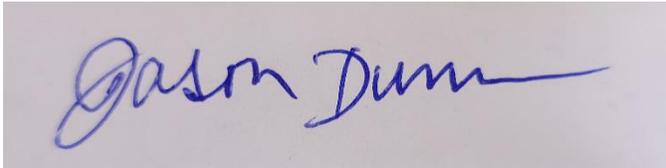
The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *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 claimant's actions were egregious and disqualifying and likely illegal under Iowa law. The claimant had no right or reason to secretly record private conversations that she was not a party to.

DECISION:

The March 4, 2022, reference 01, unemployment insurance decision is affirmed. The claimant was discharged from employment for disqualifying misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible



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May 5, 2022
Decision Dated and Mailed

jd/mh