

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**TRUDY D VANDERGRIFF  
2384 HWY 1 S  
FAIRFIELD IA 52556**

**VAN BUREN COUNTY HOSPITAL & CLINIC  
ATTN ADMINISTRATOR  
304 FRANKLIN ST  
KEOSAUQUA IA 52565**

**Appeal Number: 05A-UI-11546-LT  
OC: 10-23-05 R: 03  
Claimant: Respondent (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.***

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.

**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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

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

**STATEMENT OF THE CASE:**

Employer filed a timely appeal from the November 4, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on December 14, 2005. Claimant did participate. Employer did participate through Helen Holland, Linda Goldstein, Doug DeHart and Lisa Schnedler. Claimant's Exhibit A was received. Employer's Exhibit 1 was received.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time accountant from May 12, 2003 through September 19, 2005 when she was discharged by Helen Holland, CFO, for not following "sound business practices and office standards." (Claimant's Exhibit A, page 1) However, Holland acknowledged her errors were not intentional and saw a "mismatch" in the position for claimant. Lisa Schnedler,

administrator, found an error in an investment report for the hospital board. When brought to claimant's attention in the July 5, 2005 letter, claimant corrected the error and was not notified of any additional errors thereafter. (Employer's Exhibit 1, pages 2 and 3)

On September 19, employer offered to transfer her to work with the same pay, hours and benefits in the billing department under Linda Goldstein, business office manager and gave claimant a couple of days to think about it. Claimant declined on September 21 because it was her interactions with Goldstein that caused her to file the grievance and possibly contribute to her health problems. No other jobs were offered.

Claimant had spoken to Holland several times about issues that began with Goldstein in March 2005, and Lisa Schnedler, administrator, told her to file a grievance with Doug DeHart, assistant administrator. Claimant did so on May 25 and after DeHart summarily denied the grievance on May 27, claimant did not pursue the issue further after two department heads told her nothing would be done if the grievance involved Goldstein and the process was exacerbating her high blood pressure.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason but did not quit her job.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980).

Claimant's mere refusal of the business office clerk job after having been separated from her accountant job does not indicate an intention to quit her employment. Employer only offered her one other option which she found untenable, thus, the separation was involuntary and is considered a discharge.

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).

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 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. IDJS, 364 N.W.2d 262 (Iowa 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. IDJS, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as her supervisor, Holland, was clear that she did not consider the job to fit claimant and that the errors were not intentional and because employer had not raised any additional issues of performance or errors after the July 5 warning (issued a month after her grievance), employer has not established a current or final act of misconduct.

DECISION:

The November 4, 2005, reference 01, decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

dml/pjs