IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

APRIL D HALDA Claimant **WESLEYLIFE** Employer	**APPEAL 15A-UI-10038-CL-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 08/09/15** **Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 25, 2015, (reference 01) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A telephone hearing was held on September 25, 2015. Claimant participated personally. Employer participated through people and culture specialist, Tami Bingham and was represented by Barbara Hamilton. Employer's Exhibits 1 through 5 were received. Claimant's Exhibit A was received.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a certified rehabilitation assistant from December 4, 2006, and was separated from employment on August 10, 2015, when she was terminated.

On July 8, 2015, Lizotte complained to supervisor, Robyn Witte that claimant was following her around and making inappropriate comments. When questioned by Witte and Bingham, claimant denied the conduct and stated Lizotte was harassing her. Claimant explained that she and Lizotte had been romantically involved and the relationship had recently ended. Claimant informed Witte and Bingham that Lizotte came to claimant's home uninvited and told her she would have her job. Witte and Bingham provided claimant with a copy of its Respectful Work Environment Policy, and told claimant to confine her conversations with Lizotte to the workplace. Bingham did not ask Lizotte if she had threatened claimant's job.

Between July 31 and August 3, 2015, Lizotte sent claimant numerous text messages professing her love for claimant, denigrating claimant's new girlfriend, and accusing claimant of being sexually promiscuous. At some point, claimant replied back to Lizotte, stating, "Why do you not give two fucking shits about me until I leave!!!!!"

On August 3, 2015, Lizotte was not at work. Claimant sent Lizotte a text message stating she would be taking care of her patients and asking Lizotte if she was taking a vacation to see Jamie. That day, claimant called Lizotte eight times to ask questions about her patients. Lizotte did not answer.

On August 5, 2015, Lizotte filed a second complaint against claimant and provided copies of four text messages sent by claimant and the phones calls claimant made to Lizotte on August 3, 2015. Lizotte also reported claimant followed her in the workplace asking her where she was going on vacation and stating she wanted to shake her.

On August 10, 2015, Witte and Bingham met with claimant and terminated her employment for violating its Respectful Work Environment Policy. Claimant informed Witte and Bingham that she had text messages sent by Lizotte that would provide a more accurate representation of the situation. Bingham informed claimant that she could provide the text messages, but it would not change employer's decision to terminate her 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:
>
> 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).

Here, employer has not shown claimant violated its Respectful Work Environment Policy by communicating with Lizotte on or about August 3, 2015. If employer had conducted a full investigation, it would have seen claimant's communication to Lizotte was not unwelcome and that Lizotte was setting claimant up for termination. This information was available to employer, but it chose not to pursue it.

DECISION:

The August 25, 2015, (reference 01) unemployment insurance decision is reversed. 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
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Decision Dated and Mailed

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