

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**KELSEY L WIESE**  
Claimant

**MINACT INC**  
Employer

**APPEAL 19A-UI-09486-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/10/19**  
**Claimant: Appellant (2)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Kelsey Wiese (claimant) appealed a representative's November 26, 2019, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from work with Minact (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 27, 2019. The claimant participated personally. The employer participated by Pamela Verneys, Human Resources Manager. The employer offered and Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 16, 2019 as a full-time career counselor. The claimant signed for receipt of the employer's handbook on April 16, 2019. Section 800 of the Human Resources Policy and Procedure Manual in the handbook stated that employees should refrain "from behavior or conduct deemed offensive or undesirable, or which is subject to disciplinary action" and "violations detrimental to the good order and discipline of the organization". The Minact, Inc., handbook also states "Fraternalization between staff members and/or Job Corps students is prohibited."

On October 23, 2019, the claimant ended her shift at 8:00 p.m. Around 7:00 p.m. an adult student told the claimant she was engaged in relations with other students. The claimant said she was not interested. The student showed the claimant text messages and an explicit photograph between herself and "cupcake". The claimant told the student she could not look at the phone anymore. The student asked the claimant if she wanted to know who "cupcake" was. The claimant said she did not want to know. The student said "cupcake" was an instructor and they engaged in oral intercourse on property. The student indicated that the claimant could not tell anyone or he could get fired. The claimant thought the messages from "cupcake" were inappropriate and they sounded like he knew he was doing something wrong.

The claimant was not certain of the veracity of the student. She knew she should report harassment immediately but there was no harassment in the situation as the adult student was

happy. The claimant did not want to falsely accuse a teacher of something he did not do. At the time the information came to her, there was no one working to whom the claimant could report the information. The claimant went on vacation from October 24 to October 29, 2019.

On October 30, 2019, the claimant returned to work and mentioned the situation to her supervisor. The supervisor had known of the circumstances since October 25, 2019, but had not reported it. The two decided they should report. On October 31, 2019, the two reported the incident to the center director and program director. They were told to tell the human resources department and did so immediately. The instructor was an employee of another company, IMI.

The employer investigated the situation and terminated the instructor, the supervisor, and the claimant. During the investigation, the employer determined that a reasonable period of time to report fraternization is immediately or within twenty-four hours. The claimant was terminated for knowing there was forbidden fraternization between an employee of IMI and not reporting it within a reasonable time.

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

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 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 disqualification shall continue 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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

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, the employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as the employer created the rules for "reasonable reporting" at the time of the claimant's separation, the claimant could not conform her behavior to comply with those rules. The employer, in effect, expected a mandatory reporting situation with a timeline but did not spell out that expectation in its policies.

It is understandable that the employer wants to protect its students and it expects staff to assist in that effort. If an employer expects an employee to conform to certain expectations, detailed and reasonable policies should be given. The employer did not provide sufficient evidence of job-related misconduct. It did not meet its burden of proof to show misconduct. Benefits are allowed provided the claimant is otherwise eligible.

**DECISION:**

The representative's November 26, 2019, decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs