

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**TANIA R GOVAN**  
Claimant

**MORPHOTRUST USA LLC**  
Employer

**APPEAL 15A-UI-08910-EC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/19/15**  
**Claimant: Appellant (2)**

---

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

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the August 4, 2015, (reference 01) unemployment insurance decision that denied benefits based upon a discharge for misconduct. The parties were properly notified about the hearing. A telephone hearing was held on August 26, 2015. The claimant, Tania Govan, participated and testified. The employer, Morphotrust USA, LLC, did not register to participate in the hearing. The claimant's handwritten appeal letter was marked as Exhibit C1 and was admitted into the record.

**ISSUE:**

Was the separation from employment a disqualifying discharge for misconduct?

**FINDINGS OF FACT:**

The pertinent evidence is undisputed. The claimant was employed full time as a customer service representative from May 27, 2014 until this employment ended on July 14, 2015, when she was called into the office and informed that her employment was terminated. The claimant was informed that a phone call was left on the line when the claimant left the office at the end of day. She was informed that a supervisor had to come back to the office and turn the phone call off. When the claimant asked for evidence of this occurrence, her employer was unable or unwilling to produce it. The claimant expected a recording to show whether or not she did leave the office without ending a call. Her employer could not produce any such recording.

The claimant worked as a customer service representative, answering telephone calls and scheduling appointments for fingerprinting for the State of New Jersey. She worked in an office in Des Moines, Iowa. The claimant was not provided any script or checklist to follow in performing her duties. She was not provided any quality assurance expectations. She was expected to handle 65-80 calls per day, and to spend 4-7 minutes per call.

The claimant had previously received a verbal warning, in June of 2015, relating to a customer complaint. She was not told that her job was in jeopardy.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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).

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

(4) Report required. The claimant's statement and the 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.

Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that

individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552 (Iowa Ct. App. 1986).

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given.

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. In this case, where the employer discharged the claimant for misconduct, the employer bears the burden of proof. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The employer did not participate in this appeal hearing. The employer did not submit any evidence to meet its burden. Accordingly, pursuant to Iowa Code § 96.5(2)a, benefits are allowed.

**DECISION:**

The August 4, 2015, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The benefits claimed and withheld shall be paid, provided she is otherwise eligible.

---

Emily Gould Chafa  
Administrative Law Judge

---

Decision Dated and Mailed

ec/css