

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JULIE M. WEIDLER  
1732 480<sup>TH</sup> ST. SW  
KALONA, IA 52247-9233**

**THE UNIVERSITY OF IOWA  
C/O REBECCA OLSON  
120 USB BENEFITS OFFICE  
IOWA CITY IA 52242**

**DIA APPEAL NO. 21IWDUI0091  
IWD APPEAL NO. 20A-UI-08006**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**APPEAL RIGHTS:**

**This Decision Shall Become Final**, unless within fifteen (15) days from the mailing date below the administrative law judge's signature on the last page of the decision, 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:

***Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
or  
Fax (515) 281-7191***

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.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.  
That an appeal from such decision is being made and such appeal is signed.

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.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JULIE M. WEIDLER  
Claimant

THE UNIVERSITY OF IOWA  
Employer

**DIA APPEAL NO. 21IWDUI0091  
IWD APPEAL NO. 20A-UI-08006**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 6/26/20  
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the June 26, 2020, (reference 02) unemployment insurance decision that denied benefits based upon a finding that the claimant had been discharged from employment for “violation of a known company rule.” The parties were properly notified of the hearing. A telephone hearing was held on August 31, 2020. The claimant participated personally and testified. The employer was not present for the hearing and did not otherwise participate.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Claimant Julie Weidler had been a 30-year employee at the University of Iowa Hospitals and Clinics (UIHC). For the final 15 years she worked in the Women’s Health Center in the receptionist area checking patients. Her title was a “Clerk III.” At some time around the first week of March 2020, she checked in a particular patient who had flown in from the Middle East for treatment at UIHC. This, of course, was around the time the pandemic was just taking off in the United States, with rapidly changing policies and procedures in the workplace.

When Weidler checked this person in, as was expected she did ask her about her overseas travels. After doing so, she sent her back to the exam room. However, she did not provide a mask to her or require her to wear one. After she did so, she began questioning herself regarding whether she should have made the patient wear a mask. She did try to page the nurses to ask them, but she never heard back. So, about 15 minutes after sending the patient back, out of caution and uncertainty she brought a mask back to her in the exam room.

Weidler did recall that there had perhaps been some emails from her supervisors about policies with regard to COVID-19, and perhaps there was information in there that should have led her to

require this patient to wear a mask. However, she was quite confused and claimed she may not have had time to read the emails fully. She also noted there was some information posted at the front desk, but she does not believe it was fully up to date. In other words, she was confused and believes she was not given fully correct information about the masking requirement.

A couple days later she was called in for an investigatory meeting with her supervisor and a human resources representative where she was questioned about the incident. Then, on March 18, 2020, she was called in for another meeting at which she was discharged from her employment. She was informed this was for not following the protocol which would have required her to provide the patient with a mask. Weidler did recall two previous disciplinary incidents in her thirty years at UIHC, but neither were for similar incidents.

At the hearing on appeal from the IWD representative's denial of benefits, Weidler claimed that she was targeted due to her age and because her new supervisors had no sympathy or compassion. She noted that other employers who had similar violations were not terminated.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason. Benefits are therefore allowed. As a preliminary matter, I find that Claimant did not quit. Claimant was discharged from employment.

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 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.

Iowa Admin. Code r.871-24.32(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 Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). 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. 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). 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.

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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* 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). Further, 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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000)(fact that claimant, who was a snowplower, had two accidents involving utility lines within three days did not constitute misconduct such as would disqualify claimant from receiving unemployment benefits; there was no evidence that claimant intentionally or deliberately damaged utility lines or violated any traffic laws, and there was uncontroverted evidence that accidents were beyond claimant's control).

The record here shows no evidence of intentional misconduct, wrongful intent, or deliberate disregard. At most, this was a simple matter of negligence in failing to have adequately internalized and acted on a new policy. One could also characterize it as poor work performance. Perhaps that poor performance was significant enough to warrant the termination, but it does not warrant a finding of culpable conduct or a deliberate act in violation of the interest of the workplace. Nor was this part of any pattern or series of misconduct.

Accordingly, in this case there was no final act of misconduct that the claimant committed that would disqualify her from receiving benefits. To establish misconduct that will disqualify employee from unemployment compensation benefits, employer must prove conduct by employee consisted of deliberate acts or omissions or evinced such carelessness as to indicate wrongful intent. This is not present here. As such, employer has failed to prove that claimant was discharged for any current act of job-related misconduct that would disqualify her from receiving benefits. Benefits are allowed.

**DECISION:**

The June 26, 2020, (reference 01) unemployment insurance decision is REVERSED. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



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David Lindgren  
Administrative Law Judge

August 31, 2020

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Decision Dated and Mailed

DBL:lb