

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MARIA ORELLANA**  
Claimant

**MID AMERICA RECYCLING, LLC**  
Employer

**APPEAL 20A-UI-10353-HP-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 06/21/20**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Claimant Maria Orellana filed an appeal from an August 27, 2020 (reference 01) unemployment insurance decision that denied benefits based upon her discharge from employment with Mid America Recycling, LLC (“Mid America”). Orellana appeared and testified. Dolores Mercado testified on Orellana’s behalf. David Gunsolley appeared and testified on behalf of Mid America. Exhibits 1 and A through C were admitted into the record. I took administrative notice of the claimant’s unemployment insurance benefits records maintained by Iowa Workforce Development.

**ISSUE:**

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?

**FINDINGS OF FACT:**

On June 14, 2016, Orellana commenced full-time employment as a material sorter with Mid America. Her immediate supervisor was Gunsolley. When she commenced her employment, Orellana acknowledged she received an employee handbook from Mid America.

On June 22, 2020, Gunsolley received information Orellana and her coworker, Dwight Brown, and been involved in an altercation. Gunsolley reported he took witness statements from Jermale Wately, Augustine Kanneh, and Tony Jeffries, who reported Orellana and Brown were fighting over a bag of vegetables and Orellana became upset and struck Brown, yelled at Brown, and attempted to kick him. Mid America did not produce the witness statements at hearing. Gunsolley did not observe the encounter.

Orellana testified she and her friend, Mercado, eat lunch alone away from the other employees. Orellana and Mercado testified on June 22, 2020, Orellana was finishing her lunch and holding a bag of chili peppers in her hand when Brown came into the room. Orellana and Mercado reported Brown came over to Orellana and he grabbed the bag of chili peppers. Orellana did not give him the bag of chili peppers. Orellana and Mercado testified Brown then hit Orellana on the head with his hand. Orellana relayed she reported the incident to Gunsolley.

On June 23, 2020, Scott Emery, a supervisor, discharged Orellana for violating the policy against fighting or assaulting another employee while on company property. Mid America did not discharge Brown. Orellana acknowledged she understood hitting coworkers was not tolerated in the workplace.

Orellana had not been disciplined for violating the policy before June 23, 2020. Gunsolley reported the company has a zero tolerance policy for hitting or assault. No other employees have been terminated for violating the policy.

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

Under Iowa Code section 96.5(2)a,

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.

871 Iowa Administrative Code 24.31(1)a, defines the term "misconduct" 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 Iowa Legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 558 (Iowa 1979).

871 Iowa Administrative Code 24.32(4) also provides,

*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.

And 871 Iowa Administrative Code 24.32(8) provides:

*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.

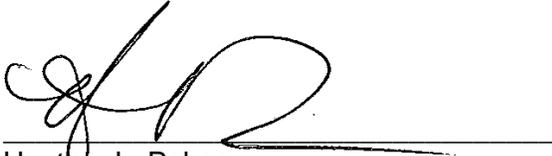
The employer bears the burden of proving the employee engaged in disqualifying misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6, 11 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262, 264 (Iowa Ct. App. 1984).

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, 808 (Iowa Ct. App. 1984). The definition of misconduct in the administrative rule focuses 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.* at 808-09. Negligence does not constitute misconduct unless it is recurrent in nature; a single act is not disqualifying unless it is indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). Additionally, poor work performance is not misconduct in the absence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211, 213 (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, 666-69 (Iowa 2000) What constitutes misconduct justifying termination of an employee and what misconduct warrants a denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679, 680 (Iowa Ct. App. 1988). Instances of poor judgment are not misconduct. *Richers v. Iowa Dep't of Job Serv.*, 479 N.W.2d 308, 312 (Iowa 1991); *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 555 (Iowa Ct. App. 1986)

An altercation commenced between Orellana and Brown on June 22, 2020, in the lunchroom. Gunsolley was not present during the incident, but testified he obtained statements from witnesses to the incident. Orellana and Mercado testified there were no witnesses in the lunchroom at the time of the incident; only Orellana, Mercado, and Brown were present. The witness statements were not produced at hearing. The purported eyewitnesses did not testify at hearing. Gunsolley was the sole witness for the employer and he did not have first-hand knowledge of the incident. Orellana and Mercado both testified at hearing. No other first-hand information was presented on behalf of the employer. Orellana had not been disciplined before for violating the policy. I do not find the employer has met its burden of proof Orellana engaged in work-connected misconduct that should preclude her from receiving unemployment benefits. Benefits are granted.

**DECISION:**

The August 27, 2020 (reference 01) unemployment insurance decision denying unemployment insurance is reversed in favor of the claimant/appellant. Benefits are allowed provided the claimant is otherwise eligible.



Heather L. Palmer  
Administrative Law Judge  
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October 14, 2020  
Decision Dated and Mailed

hlp/scn