

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

AMY J PETERS
Claimant

APPEAL NO. 07A-UI-03622-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IA DEPT/HUMAN SVCS – AREA & COUNTY
Employer

**OC: 03/18/07 R: 01
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 4, 2007, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on April 25, 2007. Claimant participated. Employer participated through Susan Hase and was represented by Ralph McGlothlen of TALX UC Express. Employer's Exhibits 1 and 2 were received. Claimant's Exhibit A was received.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time Social Worker II at the Iowa Department of Human Services (IDHS) and worked with children and adults from December 30, 1994 until March 16, 2007, when she was discharged. On or about February 8 her supervisor received a call from the Sioux City Police Department about an incident at her home involving a roommate's marijuana use. That incident ultimately resulted with a child abuse or neglect charge. On February 9 she was placed on suspension with pay pending investigation. The employer then performed a criminal background record and child abuse registry search. Claimant was allowed to respond to the background check allegations. Then Rex Hall, a records check evaluator and Social Worker IV for IDHS, determined that she may not work for IDHS because of the "nature, seriousness and circumstances of the crime and abuse; the time elapsed since she committed the crime and abuse, the number of crimes and abuses she has committed, the likelihood she will commit the crime and abuse again, and the degree of her rehabilitation." (Employer's Exhibit 2 and Claimant's Exhibit A) A union grievance and appeal of the abuse registry are pending. She has complied with all recommendations by allowing her children to live with their father for a few weeks and removing the roommate from the residence.

The roommate (the son of a family friend without a criminal history), who lived in claimant's basement and had minimal contact with her children, was charged with driving-related offenses

but no drug charges. Claimant was not charged with any crime and was not aware of his drug use while she was at work and the children were at school. A year and a half earlier she had been charged with OWI, which employer knew about at the time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment 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.

871 IAC 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.

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). 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

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, employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as claimant was diligent about checking the roommate's criminal history and limiting access to her children and was unaware of the roommate's behavior while she was at work and the children were at school, employer has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Certainly, under these mitigating circumstances and the pending appeal and grievance, benefits are allowed.

DECISION:

The April 4, 2007, reference 01, decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw