

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ISHYA HARRIS**  
Claimant

**THE UNIVERSITY OF IOWA**  
Employer

**APPEAL 21A-UI-11652-WG-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/07/21**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the April 26, 2021 (reference 01) unemployment insurance decision that disallowed benefits based upon claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on July 8, 2021. The claimant, Ishya Harris, participated personally. The employer, The University of Iowa, participated through its Human Resource Business Analyst, Jessica Wade. Claimant introduced Exhibits A & B into the evidentiary record. No other exhibits were offered.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant worked full-time for the employer as a Food Worker 1 from November 21, 2019 through March 8, 2021. In this position, claimant delivered food trays from the cafeteria of the University of Iowa Hospitals and Clinics to patient rooms throughout the hospital.

On March 4, 2021, claimant picked up a cart with three food trays for delivery in the cafeteria. As she made her way out of the cafeteria toward an elevator, a co-worker in a different department began speaking with claimant. Claimant stopped, parked her food cart in a vestibule and was speaking with the co-worker when claimant's manager, Megan, observed claimant talking and not performing deliveries.

Although Megan did not testify at the hearing, the employer read a statement prepared in which the employer asserted claimant was disrespectful and told the manager, "I'm coming," but did not actually terminate her conversation with the co-worker and return to her delivery route immediately. The employer asserted this was insubordinate and that claimant was essentially loafing on the job. No individual with personal knowledge of the events testified on behalf of the employer.

Claimant testified that she had prior and ongoing difficulties with the manager. She felt as though she was being picked on prior to the March 4, 2021 incident. However, she acknowledges that she stopped to speak with a co-worker from a different department on that

date. She testified it was common for employees to stop and speak with other employees throughout the hospital. Claimant testified that she had 35 minutes to deliver the trays on her cart and be considered "timely." She further testified that she completed her assigned deliveries on March 4, 2021 in a timely manner.

Claimant testified that when she was speaking with the co-worker on March 4, 2021, she observed her manager out of the corner of her eye. The manager looked at claimant's cart to determine if there were any trays on the cart and then walked away without saying anything. Claimant testified that the manager did not say anything to her during her shift about the incident but instead, claimant was called to a conference room later in the day. Claimant testified that, based on the conduct and practice of others throughout the hospital, she did not know it was unacceptable to stop and have brief conversations with co-workers throughout the hospital.

Claimant had prior disciplinary action against her by the employer. She was written up twice for attendance issues and once for the use of profanity. However, she had no prior disciplinary action for loafing or speaking with others during her shift. Relying upon a progressive disciplinary system, the employer discharged claimant on March 8, 2021. However, I find that claimant was discharged for a failure to perform her job duties satisfactorily and that her failure was a good faith failure given her testimony that she did not know she could not speak with colleagues and that others routinely did the same thing. Claimant has remained able and available for work since the date of her discharge.

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

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

As a preliminary matter, I find that the 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.

Further, 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). 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). 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).

At most, the employer offered hearsay evidence in an attempt to establish insubordination. The employer failed to prove insubordination without calling the manager to testify.

In this case, claimant's actions were not misconduct. They were an isolated incident of poor judgment and claimant is guilty of no more than "good faith errors in judgment." 871 IAC 24.32(1)(a). Instances of poor judgment are not misconduct. *Richers v. Iowa Dept. of Job Services*, 479 N.W.2d 308 (Iowa 1991); *Kelly v. IDJS*, 386 N.W.2d 552, 555 (Iowa App. 1986).

While the employer may well have made a good decision and acted in conformity with its progressive disciplinary system, claimant's actions were not an intentional and substantial disregard of the employer's interest which rises to the level of willful misconduct.

Having found that claimant was able and available from the date of discharge through the date of the hearing, I conclude that benefits are allowed.

**DECISION:**

The April 26, 2021 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. She remained able and available for work since the date of discharge. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



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William H. Grell  
Administrative Law Judge

July 19, 2021  
Decision Dated and Mailed

whg/scn