

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SARA J ZAHRT**  
Claimant

**APPEAL 17A-UI-10288-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FURNITURE MART USA INC**  
Employer

**OC: 09/03/17  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the September 25, 2017, (reference 01) unemployment insurance decision that denied benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on October 25, 2017. Claimant participated. Employer participated through regional manager Mark Kennedy, employment manager Christi Pease, and director of human resources Pam Koob. Employer's Exhibits 1 through 7 were received.

**ISSUE:**

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 began working for employer on September 9, 2014. Claimant last worked as a full-time office supervisor. Claimant was separated from employment on September 8, 2017, when she was terminated.

Employer has a business conduct policy stating that employees are expected to be honest and straightforward at all times, maintain a professional attitude in performing work, be a team player, and consider other co-workers when conducting daily routines and assist them whenever possible. The policy also states that employees at all levels of the company are expected to treat each other with respect. Claimant was aware of the policy.

Throughout claimant's employment customers and co-workers complained to management about her unprofessional communication style. These issues were mentioned in claimant's performance evaluations.

On March 16, 2017, claimant told co-workers about a negative interaction she had with another co-worker. As a result, she was given a written warning on April 13, 2017. The warning addressed professional communication in the workplace and engaging in conversations that

create tension, gossip, or ill feeling among co-workers. The warning stated that if the behavior was not corrected, claimant could be terminated.

On July 26, 2017, regional manager Mark Kennedy verbally warned claimant about a customer complaint he received. The customer complained claimant did not care, was snotty, and gave them a lot of attitude. Kennedy informed claimant this was not acceptable.

On August 21, 2017, Kennedy again verbally warned claimant about gossip in the workplace. Claimant discussed a negative interaction with a co-worker with other co-workers.

On September 5, 2017, claimant was working when a sales associate requested her assistance on fixing a mistake on a customer's account. Claimant said, "Nope. I'm leaving." This occurred in front of the customer and other customers. Claimant then remained at work for an additional hour, but did not assist the sales associate with the transaction. The sales associate was embarrassed and reported the incident to management.

On September 8, 2017, employer terminated claimant's employment for continued unprofessional communication in the workplace.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 96.5(2)a provides:

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 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).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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). 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 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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). 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).

Claimant was terminated for communicating in an unprofessional manner with co-workers and customers in the workplace after having been warned. This is disqualifying misconduct.

**DECISION:**

The September 25, 2017, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Decision Dated and Mailed

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