

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**DIANE M SMITH**  
Claimant

**ADESA DES MOINES LLC**  
Employer

**APPEAL NO. 18A-UI-05222-B2**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/21/17  
Claimant: Appellant (1)**

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Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated April 25, 2018, reference 10, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held in-person on May 23, 2018. Claimant participated. Employer did not participate. Claimant's Exhibits A-F were admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: As claimant was the only participant in the hearing, all findings of fact are derived from claimant's testimony. Claimant last worked for employer on or around May 21, 2018. Claimant was told by employer that they could not continue to work with claimant's not being able to be around other employees for meetings that were held over the lunch break after auctions.

Claimant has celiac disease and a gluten intolerance. She stated that she'd shared this information with employer at the time of hire. She stated that she provided doctor's notes to employer at or around her time of hire in March, 2018 detailing her food restrictions. Claimant stated that her food restrictions meant that she could not be in the same room as all of the other drivers when they were eating their lunches. Claimant would avoid the lunch room and go outside to eat her lunch. This would mean that claimant was not present at meetings whereby driving assignments were given out, and claimant would be left behind when she would still be out at her car having lunch and the other members in the van, they would use to travel to dealerships to pick up cars, would leave without her.

Claimant stated that she didn't want to be in the room with others while they were eating because she didn't want to activate her celiac problems which might take effect and cause her to gag while she was driving an expensive car back to the auction. Claimant also said that other

drivers were frustrated that she would not go into the restaurant that all drivers might go to, as the drivers would eat sandwiches.

Claimant did not provide any documentation as to a doctor's request for accommodation that claimant needed to be in a separate room or area from anyone else who was eating food with gluten. Employer requested such documentation, but claimant stated that the documentation provided didn't mention any need to be separated from others who might eat bread.

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

Iowa Code section 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 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.

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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon supra*; *Henry supra*.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning participating in team meetings.

The last incident, which brought about the discharge, constitutes misconduct because claimant was asked to produce medical documentation that she was not able to be at meetings with other team members when plans for the afternoon were laid out. Claimant repeatedly wasn't ready to travel with the van when other members went to dealerships. As claimant didn't show employer that she needed a special accommodation, her refusal to participate in the lunch meetings constitutes misconduct. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated April 25, 2018, reference 10, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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