

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MERLENE G NORDBY**  
Claimant

**APPEAL 15A-UI-12359-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SECURITAS SECURITY SERVICES USA**  
Employer

**OC: 10/18/15  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Merlene Nordby (claimant filed an appeal from the November 3, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination Securitas Security Services USA (employer) discharged for conduct not in its best interest. The parties were properly notified about the hearing. A telephone hearing was held on November 24, 2015. The claimant participated on her own behalf. The employer participated through Human Resources Manager John Timm and was represented by Amanda Lange of Tax UCM Services.

**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: The claimant was employed full-time as a Security Officer beginning on July 5, 2013, and was separated from employment on October 16, 2015, when she was discharged. On October 12, 2015, the claimant learned that her aunt had passed away. She notified Human Resources Manager John Timm who offered her the option of taking a day off of work. However, the claimant needed to work and declined his offer.

The claimant arrived at the client's site early. She went inside one to two hours before her shift to use the restroom. She was crying about the loss of her family member and speaking with her husband at the time. The claimant then went back out to her vehicle. At 4:00 p.m., when her shift started, the claimant reported to work. Her supervisor contacted her to notify her that she was being removed from the client's account as she had been observed screaming and yelling while in the client's offices earlier. After receiving the phone call, the claimant confronted the client to ask if she was the one who reported her to the employer. The client admitted she was and the claimant denied screaming and yelling. The claimant then returned to her post and removed her personal belongings.

The client reported the situation to the employer. Timm conducted an investigation which included taking a statement from the client and speaking with the claimant. The client stated she was uncomfortable with the interaction with the claimant and did not appreciate being confronted. The claimant acknowledged making a mistake, but denied she was behaving in the manner described by the client. Timm determined the claimant had engaged in insubordinate or derogatory conduct which, according to the employer's handbook, is a rule infraction that results in immediate termination of employment. The claimant should have followed the chain of command and spoken to her supervisor or Timm if she had questions about why she had been removed from the account. The claimant had not received any prior warnings for similar conduct. The employer terminated the claimant's employment on October 16, 2015.

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

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

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).

In an at-will employment environment 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, it incurs potential liability for unemployment insurance benefits related to that separation. 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." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

The conduct for which the claimant was discharged was an isolated incident of poor judgment and, as the employer had not previously warned the claimant about the issue leading to the separation, it has not met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Accordingly, benefits are allowed.

**DECISION:**

The November 3, 2015, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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