

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SANDRA K CHRISTOPHERSON
Claimant

FLAGGER PROS USA LLC
Employer

APPEAL 19A-UI-07700-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/25/18
Claimant: Respondent (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Flagger Pros USA (employer) appealed a representative's September 20, 2019 decision (reference 02) that concluded Sandra Christopherson (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 22, 2019. The claimant participated personally. The employer participated by Victoria Johnson, Human Resources Manager. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 7, 2018, as a full-time seasonal flagger. She signed for receipt of the employer's handbook on May 2, 2018.

On July 16, 26, and August 2, 2019, the human resources manager had telephone conversations with the claimant about areas of concern. The manager generally called the claimant when the manager knew the claimant was driving a pilot car for the company. The manager knew it was against company policy for the claimant to speak with the manager while performing this duty.

On an unknown date, the claimant was holding an eight-foot "stop/slow" sign to direct traffic in and out of a construction site for a customer company. The claimant is five-feet tall and the day was windy. The wind pushed the sign over and the sign hit a vehicle driven by a young man. The claimant attempted to speak with the driver about the accident but he would not engage with the claimant.

Later, the father of the driver wanted cash from the employer for unknown damage to the vehicle. On August 21, 2019, the human resources manager telephoned the claimant when the

manager knew the claimant was driving a pilot car for the company. She called to question the claimant about the incident. The claimant talked for a short time and then ended the conversation. The manager called the claimant back to ask more questions.

On August 30, 2019, the manager called the claimant. She decided to tell the claimant that the claimant had to pay \$435.00, the entire cost of the damage to the vehicle, to see if she took responsibility. Later, in the call she would tell the claimant something different. The claimant became upset during the call and told the manager that the cost of the damage should be turned into the employer's insurance company. The manager terminated the claimant for raising her voice, not apologizing for the accident, and being insubordinate.

The claimant filed for unemployment insurance benefits with an effective date of November 25, 2018. The employer participated personally at the fact finding interview on September 17, 2019, by Megan McGonigle.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

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).

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). 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). The employer discharged the claimant for poor work performance and has the burden of proof to show evidence of intent. The employer did not provide any evidence of intent at the hearing. The claimant's poor work performance was a result of the weather. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's September 20, 2019, decision (reference 02) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn