

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

SHARON D FOULKS
Claimant

APPEAL NO. 11A-UI-07100-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIRST CLASS CLEANING INC
Employer

**OC: 05/01/11
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 20, 2011 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on June 22, 2011. Claimant participated with daughters Diane Foulks and Linda Winsschitl and client Marg Anderson. Employer participated through Company President Steve Gilbert and General Manager (daughter of Deb and Steve Gilbert) Wendy Zieser. Deb Gilbert was not called as a witness.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a cleaner from 2004 and was separated from employment on April 26, 2011. Claimant was friends with the Gilberts and Zieser before entering into the business relationship. On April 20, claimant arrived at the Anderson residence and started cleaning before supervisor Deb Gilbert and Zieser arrived. Anderson was complaining to claimant about cleaning items not completed as required by the contract. Anderson had first accused claimant of failure to complete the tasks, then apologized when she became aware it was Deb Gilbert's and Zieser's responsibility. In response, claimant laughed it off. Deb Gilbert accused claimant of "snickering" with client Anderson as if they were conspiring about something, so she told claimant to delete the client information, including phone numbers and security and garage access codes from her cell phone, go home for the weekend, and told her they would discuss it on Tuesday. She removed garage door codes on that date after they left the Johnson residence but did not remove phone numbers, as they were available in the phone book. On Tuesday April 26 claimant was fired and the employer cancelled the contract with Anderson.

REASONING AND CONCLUSIONS OF LAW:

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

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.

871 IAC 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.

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). 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. IDJS*, 367 N.W.2d 300 (Iowa App. 1985). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

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, employer incurs potential liability for unemployment insurance benefits related to that separation. Given that the request to delete the information was precipitated by the employer's misguided notion that claimant and a client were conspiring against her, the request was not reasonably related to the issue at hand, which was the client's dissatisfaction with Deb Gilbert's and Zieser's contract performance. Because the claimant removed the codes later in the day, leaving the public record phone numbers, she substantially complied with the request. Since the employer did not check her phone to verify the code removal, claimant's testimony about that is credible. The employer has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

DECISION:

The May 20, 2011 (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed. The benefits withheld shall be paid, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw