

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRACY L BLOOMQUIST
Claimant

APPEAL NO. 11A-UI-03655-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA CATHOLIC CONFERENCE
Employer

**OC: 01/30/11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Iowa Catholic Conference filed a timely appeal from a representative's decision dated March 14, 2011, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on April 28, 2011. Claimant participated personally. Participating on behalf of the claimant was Mr. John Jordan, Attorney at Law. The employer participated by Mr. Paul Jahnke, Representative, and witnesses Jerry Greving, Business Manager/Supervisor and Mr. Rick Hoening, Volunteer/Adviser. Claimant's Exhibits A, B, and C and Employer's Exhibits One and Two were received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Tracy Bloomquist was employed by the Iowa Catholic Conference as a full-time church custodian at St. Cecilia's Church from July 27, 2007 until January 31, 2011 when she was discharged for unsatisfactory work performance. The claimant was paid by the hour. Her immediate supervisor was Jerry Greving.

The claimant was discharged when the employer concluded that Ms. Bloomquist was not adequately performing the duties incident to her job as a custodian after being warned.

On November 8, 2010, Ms. Bloomquist was issued a warning and evaluation for unsatisfactory job performance. Mr. Greving at that time noted numerous areas of deficiencies in Ms. Bloomquist's work and the claimant was advised that she must improve her work performance to remain employed. The claimant received no additional official warnings from the employer, however, a Parrish volunteer, Mr. Hoening, at times advised Ms. Bloomquist during the month of December 2010 about how to more effectively do her job. Although

Ms. Bloomquist's job performance did not fully meet the employer's expectations, the employer did note improvement.

In January 2011, Ms. Bloomquist was off work on a number of occasions due to illness and had been unable to report to work between January 17, 2011 and January 30, 2011 because of a medically verified non-work-related injury. During the claimant's absence her duties were performed by Mr. Hoening and at least one other volunteer. The employer concluded during this time that the level of cleanliness expected in the church and associated areas was not satisfactory and the decision was made to terminate Ms. Bloomquist upon her return to work on January 31, 2011.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 this matter. See Iowa Code § 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment

Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992). When based upon carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa 1988).

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 a reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation.

The evidence in the record establishes that the claimant was unable to meet the level of competence expected by the employer after being warned. The evidence further establishes, however, the claimant made notable improvement in the performance of her work after being warned in November 2010 and that the claimant received no additional specific warnings from the employer prior to being discharged on January 31, 2011. During a period of absence for a verifiable medical condition, the employer assessed the condition of the church and its facilities and determined that Ms. Bloomquist’s level of performance was not satisfactory and made a decision to terminate the claimant. While the decision to terminate Ms. Bloomquist may have been a sound decision from a management viewpoint, the evidence in the record does not establish intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. The administrative law judge concludes that based upon the evidence in the record that the claimant did not have the skills or abilities to perform her duties at the level of competence expected by the employer. Claimant’s conduct did not rise to the level of intentional disqualifying misconduct. Benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative’s decision dated March 14, 2011, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs