

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**VONMAE GRAVES**  
Claimant

**APPEAL NO: 18A-UI-09291-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MOSAIC**  
Employer

**OC: 08/05/18**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the August 22, 2018, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 25, 2018. The claimant participated in the hearing. Debra Grant, Human Resources Representative; Rita Gouchanour, Direct Support Supervisor; and Leslie Buhler, Employer Representative; participated in the hearing on behalf of the employer. Department's Exhibit D-1 was admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last known address of record on August 22, 2018. The claimant has a new address and did not receive the decision. She called the Department September 6, 2018, learned of the decision, and went to her local office in Council Bluffs to file an appeal of the representative's decision. Because the disqualification decision was mailed to the incorrect address and the claimant filed her appeal the day she learned of the decision, the administrative law judge must conclude her appeal is timely.

The claimant was employed as a full-time direct support associate for Mosaic from July 25, 2005 to August 2, 2018. She was discharged after exhausting her FMLA and leave of absence.

The claimant returned from FMLA March 2, 2018, after having two intestinal surgeries in October 2017. On March 13, 2018, the claimant notified the employer she felt pain in her leg and that her leg gave out while she was at work. She went to the employer's occupational health center and was initially diagnosed with a sprained knee. She later saw her primary care physician who ordered an MRI and it was determined she had a "pulled meniscus." The claimant was on FMLA until April 5, 2018. She requested and was granted a leave of absence April 6, 2018. She had surgery on her knee July 16, 2018. The claimant's physician imposed

restrictions stating she could not climb stairs or bend or stoop. The employer could not accommodate those restrictions because the house the claimant worked in as well as the other homes all had stairs. After the claimant exhausted her FMLA and 90 day leave of absence and could not return to work without restrictions, the employer terminated the claimant's employment.

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

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

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 proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful

wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant was injured but was denied worker's compensation. She was unable to return to work without restrictions before she exhausted her FMLA and leave of absence and the employer was unable to accommodate her restrictions. There is no evidence of misconduct on the part of the claimant.

Under these circumstances, the administrative law judge must conclude the claimant's actions do not rise to the level of intentional, disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

**DECISION:**

The August 22, 2018, reference 01, decision is reversed. The claimant's appeal is timely. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn