

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHRISTINA M MCCUEN
Claimant

IA DEPT OF INSPECTIONS & APPEALS
Employer

**APPEAL 19A-UI-08696-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/13/19
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Claimant filed an appeal from the November 1, 2019 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on November 27, 2019, at 8:00 a.m. Claimant participated. Employer did not participate. No exhibits were admitted.

ISSUE:

Whether claimant's separation was a discharge for disqualifying job-related misconduct.

FINDINGS OF FACT:

As claimant was the only witness, the administrative law judge makes the following findings of fact based solely upon claimant's testimony: Claimant was employed as a full-time Health Facilities Surveyor from December 6, 2004 until her employment with Iowa Department of Inspections and Appeals ended on October 8, 2019. Claimant took a leave of absence from work beginning June 20, 2019 due to a non-work related health matter. An assessment completed on July 15, 2019 found claimant was not fit to return to work. Claimant provided employer with subsequent assessments stating that she was fit to return to work. Claimant exhausted her leave on September 26, 2019. Employer terminated claimant's employment on October 8, 2019 based upon the assessment completed on July 15, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Iowa Code section 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 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, 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).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) *Past acts of misconduct.* While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge cannot be based on such past act or acts. The termination of employment must be based on a current act.

There is no evidence of misconduct by claimant. Employer has not met its burden of proving a current act of disqualifying job-related misconduct. Benefits are allowed provided claimant is otherwise eligible.

DECISION:

The November 1, 2019 (reference 01) unemployment insurance decision is reversed. Claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

acw/scn