

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

REBECCA KING

Claimant

NEBRASKA FURNITURE MART INC

Employer

APPEAL 19A-UI-06916-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/27/19

Claimant: Appellant (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Rebecca King (claimant) appealed a representative's August 23, 2019 decision (reference 05) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Nebraska Furniture Mart (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 24, 2019. The claimant participated personally. The employer participated by Kevin Ortnier, Human Resources Generalist. The employer offered and Exhibit 1 was received into evidence. The claimant offered and Exhibit A was received into evidence.

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 July 15, 2019, as a full-time contact center representative. She electronically signed for receipt of the employer's handbook on April 25, 2019, before she was hired. The employer did not issue the claimant any warnings during her employment.

After she was hired, the claimant learned she had to pass a test in order to keep her job. The claimant had two weeks of training. During the training, she was not allowed to take notes. She was not allowed to practice outside of the classroom on breaks or at home. The training was intense but she was determined to pass the test. The trainer and all other students were approximately thirty to forty years younger than the claimant. The employer was supportive as the claimant struggled to learn the material.

On July 29, 2019, the claimant discovered she did not pass the test. The customer service manager met with the claimant to discuss the matter. The claimant wondered aloud whether medical issues in her family made it difficult for her to pass the test. The manager made it clear that taking the test again was not a possibility for the claimant at that time. She told the claimant she would tell the employer that the claimant left for medical reasons. In this way, the

claimant could return in a year and try again. The manager told the claimant to return her work-assigned items. The claimant did so and left the premises.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or

disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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). Misconduct connotes volition. A failure in job performance which results from inability or incapacity is not volitional and therefore not misconduct. *Huntoon v. Iowa Department of Job Services*, 275 N.W.2d 445 (Iowa 1979). 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 her difficulty with the employer's training. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided she is otherwise eligible.

DECISION:

The representative's August 23, 2019, decision (reference 05) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed, provided she is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs