

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RICHELLE RICE
Claimant

SIOUX CITY DQ INC
Employer

APPEAL 21A-UI-23956-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/26/21
Claimant: Appellant (2)

Iowa Code §96.5(2)a-Discharge/Misconduct
Iowa Code §96.5(1)- Voluntary Quit

STATEMENT OF THE CASE:

On October 27, 2021, the claimant/appellant filed an appeal from the October 20, 2021, (reference 01) unemployment insurance decision that denied benefits based on claimant being discharged from work for violation of a known company rule. The parties were properly notified about the hearing. A telephone hearing was held on December 16, 2021. Claimant participated at the hearing. Employer did not call in to participate while the hearing was being held.

ISSUE:

Was the separation a discharge for job-related misconduct that disqualifies her from benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in July 2016. Claimant last worked as a full-time store manager. Claimant was separated from employment on September 28, 2021, when she was discharged.

On September 28, 2021, claimant was notified that she was being terminated for scheduling two minors that were under 16 years of age to work until 10:00 p.m. Under Iowa law §92.7 a person under the age of 16 is not allowed to work past 7:00 p.m. beginning Labor Day and going through June 1st.

When an employee is hired their paperwork is sent to Human Resources which is not located in the store. Human Resources then reviews the paperwork and puts a star in the system by each of the employees that are minors. The stars indicate the employee cannot work past 7:00 p.m. When claimant created the schedule, the minors that she was terminated for scheduling past 7:00 p.m. did not have a star by their name indicating the hour restriction. Claimant did not know if the employees were subject to the restriction because she did not have their paperwork indicating their ages. Claimant did not receive a previous written or verbal warning. The employer was not present to offer evidence regarding the separation.

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. Benefits are allowed.

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.

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 Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). 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, it incurs potential liability for unemployment insurance benefits related to that separation. 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. 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. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Further, poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). 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 Bd.*, 616 N.W.2d 661 (Iowa 2000)(fact that claimant, who was a snowplow, had two accidents involving utility lines within three days did not constitute misconduct such as would disqualify claimant from receiving unemployment benefits; there was no evidence that claimant intentionally or deliberately damaged utility lines or violated any traffic laws, and there was uncontroverted evidence that accidents were beyond claimant's control).

To establish misconduct that will disqualify employee from unemployment compensation benefits, employer must prove conduct by employee consisted of deliberate acts or omissions or evinced such carelessness as to indicate wrongful intent. Claimant testified that Human Resources notifies the schedulers of the minor's restrictions by putting a star by their name. The stars were absent by the two employees she was terminated for scheduling past 7:00 p.m. Claimant's error in scheduling the two minors does not appear to be deliberate or intentional. The employer has failed to prove that the claimant acted in any deliberate way to breach the duties or obligations of her employment contract. There was no willful or wanton action or omission of claimant which was a deliberate violation or disregard of standards of behavior which the employer has the right to expect of claimant. The employer failed to prove claimant acted with 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. As such, employer has failed to prove that claimant was discharged for any current act of job-related misconduct that would disqualify her from receiving benefits. Benefits are allowed.

DECISION:

The October 20, 2021, (reference 01) unemployment insurance decision is REVERSED. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

A handwritten signature in black ink that reads "Carly Smith". The signature is written in a cursive style with a large, looped "C" and a long horizontal stroke extending from the "y".

Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

January 21, 2022
Decision Dated and Mailed

cs/mh