

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**MELANIE A HARDIN  
1819 W 6<sup>TH</sup> ST  
DAVENPORT IA 52802**

**REGIS CORP  
C/O EMPLOYERS UNITY INC  
PO BOX 749000  
ARVADA CO 80006-9000**

**Appeal Number: 05A-UI-04641-LT  
OC: 05-02-04 R: 04  
Claimant: Appellant (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the April 25, 2005, reference 10, decision that denied benefits. After due notice was issued, a hearing was held on June 9, 2005. Claimant did participate. Employer did participate through April Kerbs and Kitty Elkenberry and was represented by Marcy Schider of Employers Unity.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time stylist through April 8, 2005 when she was discharged. Claimant told April Kerbs, district manager, “it is hell working for Kitty” Elkenberry, store manager and she did not wish to be treated the way she was. Kerbs told claimant she did not believe she was

happy working there and asked her to leave. She also told claimant she was going to release her from the 90 days waiting period for a transfer to Cost Cutters, which also required a separation from the employment. Claimant wanted a transfer but did not want to quit. Claimant asked if she was firing her and Kerbs replied, "It would be best if you did not come back."

Claimant reported to Kerbs that Elkenberry required claimant to arrive for work 15 minutes early but often the door would not be open, but if claimant did not report early, she would be disciplined. Claimant complained to Kerbs about Elkenberry's boyfriends being on premises, talk of pregnancy tests, Elkenberry working while smelling of alcohol and customer complaints about Elkenberry telling them about her personal life and the amount of bare skin shown in the salon. Claimant also notified Kerbs of Elkenberry leaving the salon unattended. When claimant discovered that Kerbs and Elkenberry socialized together, and Kerbs did not handle her complaints she took her complaints about Elkenberry above Kerbs' head in the chain of command. Kerbs disciplined claimant for doing so. Claimant did not tell Kerbs she did not like working for a younger person but suggested that Kerbs have Elkenberry drug tested or talk to claimant's daughter about Elkenberry's conduct in public as a reflection on the salon.

#### REASONING AND CONCLUSIONS OF LAW:

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

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 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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). 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. IDJS, 364 N.W.2d 262 (Iowa 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. IDJS, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on 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 App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as it is apparent Kerbs discharged claimant in retaliation for her reasonable and legitimate reports and complaints about Elkenberry, it has not met the burden of proof to establish that claimant engaged in any misconduct.

Even had claimant quit her job to attempt the transfer as the policy apparently required, her reasons for leaving related to Elkenberry's conduct and Kerbs' lack of action on the reasonable complaints were for good cause attributable to the employer. In either event, benefits are allowed.

DECISION:

The April 25, 2005, reference 10, decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

dml/kjf