

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BRANDY J KLINE**  
Claimant

**FAYETTE COUNTY**  
Employer

**APPEAL 15A-UI-04523-KC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/15**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant, Brandy Cline, filed an appeal from the April 8, 2015, (reference 01) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A telephone hearing was held on July 21, 2015. The claimant testified and was represented by Attorney Erin Patrick Lyons. The employer, Fayette County, was represented by Attorney Jon K. Swanson. Sgt. Hendershot, Thyrone Matthews, Erin Ryerson and Anthony Banford all testified on behalf of the employer. Employer's Exhibits A through J are considered as part of the record in this matter.

The ALJ who presided over this hearing was unable to complete the decision for this administrative appeal. Her supervisor, UI Appeals Manager Emily Gould Chafa, listened to the hearing recording and reviewed the exhibits which were submitted and admitted into the record. This decision is based on the hearing recording and the exhibits.

**ISSUE:**

Was the claimant discharged for work-related, disqualifying misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a detention officer, or jailer, from September 4, 2013, and was separated from employment on March 24, 2015, when her employment was terminated. An investigation preceded her separation from employment.

The most recent incident involved a violation of the prison rape elimination act. On March 1, 2015, a jail inmate filed a grievance relating to the claimant's inappropriate conduct. Sgt. Hendershot conducted an investigation into this grievance. This internal investigation report was dated March 24, 2015. (Employer Exhibit B) He investigated allegations of violations of P.R.E.A. (the prison rape elimination act); socializing with inmates, ex-inmates or friends, relatives of inmates; confidentiality; facility communications and safety and security; hostile work environment; HIPAA; and insubordination. More than one inmate reported

inappropriate behavior in their interactions with the claimant. (Employer Exhibit B: Matthews testimony) Thyron Matthews, Jail Administrator, found the statements of these inmates to be credible. Matthews made the decision to terminate the claimant's employment. He communicated his decision to the Fayette County Sheriff, Marty Fisher. Sheriff Fisher concurred. The claimant received and signed a written discharge document on March 24, 2015. (Employer Exhibit A)

The first two main reasons for the claimant's discharge were insubordination. Other reasons were the violations of P.R.E.A., confidentiality, facility communication and safety and security, and a hostile work environment. (Employer Exhibit A; Matthews testimony)

The claimant admitted to conversations with a co-worker about sex toys and batteries. (Employer Exhibit B) A co-worker objected to these conversations. (Ryerson testimony) This co-worker recalled a time in March when the claimant stayed in the jail area after her shift ended. This co-worker recalled the claimant making copies of grievances, which this co-worker knew to be improper. (Ryerson testimony) The claimant admitted making these copies.

Another co-worker recalled an incident involving the claimant and an inmate, where they conversed while the claimant covered up the microphone to ensure that the conversation would not be recorded or overheard. (Banford testimony) The claimant did not deny this incident.

The claimant received prior warnings for inappropriate sexual conversations with inmates, disrespectful conduct to her supervisor and co-workers, and her use of profanity with co-workers. She continued this conduct after receiving these warnings. (Matthews testimony)

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

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(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 for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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

(4) Report required. The claimant's statement and the 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.

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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). 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).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

The employer presented substantial and credible evidence that claimant continued to engage in inappropriate conduct after she was warned not to do so. This is evidence of deliberate conduct in violation of company policy, procedure, or prior warning. The employer's requirements and requests for appropriate conduct were not unduly burdensome or unreasonable. Benefits are denied.

#### **DECISION:**

The April 8, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until

such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Emily Gould Chafa on behalf of Kristin A. Collinson  
Administrative Law Judge

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Decision Dated and Mailed

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