

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**CASSANDRA FRANZEN**  
Claimant

**APPEAL NO. 12A-UI-03942-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 02/19/12**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from the April 2, 2012 (reference 02) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on May 2, 2012. Claimant participated. Employer participated through human resources manager Sara White, perishables manager JJ Hesnard, and floral manager Jenn Bergmeier and was represented by Julia Day of Corporate Cost Control, Inc. Employer's Exhibit One was admitted to the record.

**ISSUE:**

Did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a floral designer in Cedar Rapids and was separated from employment on February 18, 2012. On February 15 a part-time employee, Julie, took an order from a customer in Marshalltown to be delivered in Marshalltown. Julie did not refer the customer to the Marshalltown store and did not transfer the order herself as she had been trained and was authorized to do. The employer does not have a specific place for out-of-town orders or transfers apart from regular in-town orders. Julie did not place the order in the box for the day of the week related to the delivery as is procedure but misplaced the order in a book of funeral flowers and did not work on February 16. Transfer orders are normally sent out the day they are taken or received. Designers Amy and Bergmeier were working but neither handled this order and neither were disciplined for failure to do so. Claimant was not working February 15 so she did not find the order in the closed book until near the end of her shift on February 16. She had two other funerals and a wedding to prepare for and was the only designer working that day. Part-time employee Diane found the order in the book about an hour and a quarter before the end of claimant's shift. By the time claimant found the order it was too late to transfer it to Marshalltown as it did not have the appropriate flowers for the order so Bergmeier had to deliver it to Marshalltown. Julie was not disciplined for her part in the order

errors. Claimant was discharged without being questioned about her knowledge of the situation.

### **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.

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." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman, 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. IDJS*, 391 N.W.2d 731 (Iowa App. 1986). 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).

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, employer incurs potential liability for unemployment insurance benefits related to that separation. The conduct for which claimant was discharged was related to the negligence of Julie, not claimant. Even had claimant been involved to some degree, since the consequence was more severe than others received for the same offense, the disparate application of the policy cannot support a disqualification from benefits. Benefits are allowed.

**DECISION:**

The April 2, 2012 (reference 02) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

---

Dévon M. Lewis  
Administrative Law Judge

---

Decision Dated and Mailed

dml/pjs