

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DONA RICHMAN
Claimant

APPEAL 16A-UI-09447-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OPPORTUNITY VILLAGE
Employer

**OC: 07/31/16
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 25, 2016, (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 September 16, 2016. Claimant participated personally and was represented by Jerry Richman. Employer participated through personnel specialist Tina Leonard and qualified developmental disability professional Vicki Freeman. Qualified developmental disability professional Becky Grazier was present, but did not testify.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on November 5, 2003. Claimant last worked as a full-time personal support professional. Claimant was separated from employment on August 2, 2016, when she was terminated.

Claimant worked on July 5, 2016.

On July 7, 2016, a supervisor reported that claimant grabbed a client by the wrist on July 5, 2016, and spoke to her in a harsh tone.

Employer suspended claimant on July 8, 2016, pending further investigation. Employer interviewed the supervisor and claimant during the investigation. Claimant denied engaging in the conduct. The supervisor was the only witness. Employer also interviewed other staff members as part of the investigation, but no other staff member had any knowledge of the alleged incident. The client was not interviewed as she is nonverbal.

By August 2, 2016, employer had concluded claimant engaged in the conduct. Employer terminated claimant for taking abusive actions toward a client.

REASONING AND CONCLUSIONS OF LAW:

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

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).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 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. 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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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).

As stated above, it is the employer’s burden to prove misconduct. Here, the employer did not establish claimant engaged in the alleged conduct. There were only two potential witnesses to the incident in question—the supervisor and the claimant. Claimant denies grabbing the client by the wrist. The supervisor did not testify at the hearing. Employer did not present any evidence of bruising or a sufficient explanation for why the supervisor waited two days to report claimant’s alleged abusive conduct. People other than claimant interacted with the client between July 5 and 7, also calling into question whether claimant was the person who caused the alleged bruising.

In summary, employer has not presented sufficient evidence to meet its burden to show claimant was terminated for engaging in job-related misconduct. Thus, benefits are allowed.

DECISION:

The August 25, 2016, (reference 01) unemployment insurance decision is reversed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Christine A. Louis
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Decision Dated and Mailed

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