

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LISA A CARLSON
Claimant

ROBARB LLC
Employer

APPEAL 21A-UI-18437-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/23/21
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Lisa A Carlson, the claimant/appellant, filed an appeal from the August 17, 2021, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on October 12, 2021. Ms. Carlson participated and testified. The employer participated through Ryan Bricks,

ISSUE:

Was Ms. Carlson discharged for disqualifying, job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Carlson began working for the employer on July 3, 2018. She worked as a full-time estimator, she did some project management work. Her employment ended on May 11, 2021.

In the spring of 2021, Mr. Bricks and Ms. Carlson had a conversation about her work performance. Mr. Bricks offered Ms. Carlson a field job instead of her estimator job because the employer was seeing some work performance issues. Ms. Carlson declined. Mr. Bricks told Ms. Carlson to reach out to him or the owner if she needed help.

Ms. Carlson reached out to the owner for help with her work frequently. Ms. Carlson and the owner reviewed each of her jobs on a white board, and Ms. Carlson followed up with the owner when she needed additional help.

Ms. Carlson took off work on Monday, May 10, 2021. Over that long weekend, the employer received calls and emails from customers saying they had been trying to reach Ms. Carlson but were not able to. The employer reviewed some of Ms. Carlson's files and saw that she was over-budget on some of her jobs. The employer also saw that Ms. Carlson was not charging some customers the inspection fee. The employer charged for inspection many of the times.

On Tuesday, May 11, when Ms. Carlson returned to work, the owner and Mr. Bricks called her into the office and terminated her employment. The owner told Ms. Carlson that it was clear to him that she was not happy with her job and he thought it best that they part ways. Ms. Carlson had no prior disciplinary record. Ms. Carlson never told the employer that she was unhappy with her job. The employer did not tell Ms. Carlson about the telephone calls or emails from customers over the weekend. Mr. Bricks testified in the hearing that the real reason the employer terminated Ms. Carlson's employment was she was careless in her job.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Carlson 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 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). 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).

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. 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.

Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552 (Iowa Ct. App. 1986).

In this case, while Ms. Carlson was on a long weekend break, the employer concluded that she was not meeting its expectations and terminated her employment. Ms. Carlson attempted to perform the job to the best of her ability, but was unable to meet the employer's expectations. This is not misconduct. Since the employer has failed to establish intentional misconduct, as is the employer's burden of proof, benefits are allowed.

DECISION:

The August 17, 2021, (reference 01) unemployment insurance decision is reversed. Ms. Carlson 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.



Daniel Zeno
Administrative Law Judge
Iowa Workforce Development
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

October 15, 2021
Decision Dated and Mailed

dz/kmj