

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEANIE L TIFFIN
Claimant

APPEAL NO. 11A-UI-08231-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**MANAGEMENT & TRAINING
CORPORATION**
Employer

**OC: 05/22/11
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 16, 2011 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on August 2, 2011. Claimant participated. Employer participated through human resources manager Lisa Katzer. Employer's Exhibit 1 was admitted to the record. Claimant's Exhibit A was admitted to the record.

ISSUE:

The issue is whether claimant was discharged 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 residential advisor and was separated from employment on May 24, 2011. On May 10 a coworker asked her to take a student's medication from a dorm to the wellness center. She put it in her purse to do so on the way home for the day. She forgot to do it before she went home for her two days off. When it was brought to her attention she agreed to move medical appointments around so she could return the medication, which involved several hours of driving. She did not intend to remove the medication from the property or keep it. She had problems with her supervisor getting into her purse and reported it to management. A coworker also found out about claimant's mental health appointment, which she revealed only to one person in management. She had been warned on May 3, 2011 after having been found sleeping on duty for about four hours after having taken a prescription medication for a sleeping disorder. She was allowed to take a nap on her break and her cell phone alarm did not go off because the battery ran out while she was sleeping. She was warned November 29, 2010 about leaving work without permission on November 29, 2010 but she had made arrangements for the students, advised security, and left a note for her supervisor as she had been instructed to do. She left 15 minutes early after having reduced her lunch break by an equivalent amount of time.

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 § 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." 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).

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 merely an isolated incident of forgetfulness and inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

DECISION:

The June 16, 2011 (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed. The benefits withheld shall be paid, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs