IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

KIMBERLY R NELSON Claimant **I.T.A. GROUP INC** Employer	**APPEAL 15A-UI-07200-JP-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 05/24/15** **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, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 12, 2015. Claimant participated. Attorney Jason S. Rieper participated on claimant's behalf. Employer participated through Dan Davis. Katie Nguyen was present for the hearing on behalf of the employer, but did not participate.

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 was employed full time as a support analyst from August 23, 2004, and was separated from employment on May 21, 2015, when she was discharged.

The employer is an ISO certified company. Each department maintains their own ISO documentation; included in the certification, is that the employer documents its processes, follows the documentation, and references and maintains the documentation. There are ongoing audits to maintain their ISO certification. There would be a problem with the certification if the documentation and processes are not followed. Claimant was aware that the employer is ISO certified.

A system analyst for the employer is supposed to be able to explain the process they used if asked. They are supposed to have the process documented and keep the documentation in a central location. They are also responsible for updating the documentation if the process is changed.

Claimant was discharged for consistently failing to meet the core job requirements of following the processes and documentation. Mr. Davis, claimant's supervisor, testified claimant was discharged because she could not explain the process she was using and she could not readily find the process documentation. Mr. Davis testified claimant also was inconsistent in

troubleshooting independently and did not ask for help. The final incident occurred on May 18, 2015, when Mr. Davis discovered that claimant had been having an issue with invoicing dating back to April 22, 2015. On May 19, 2015, Mr. Davis sat down with claimant to discuss the invoicing issue. Mr. Davis testified that claimant was unable to describe the process she followed each month for the invoice. Claimant testified she was not able to explain the process right away to Mr. Davis because she was nervous with him sitting right over her. Mr. Davis testified it took several minutes for claimant to locate the documentation for the process she was using. The employer required all processes to be documented and for claimant to know where the documentation is located. The employer further required claimant to reference the process as she does the work. Mr. Davis testified following the process and documentation procedure is part of her core job responsibilities. Mr. Davis testified claimant was aware that she should know where the documentation is located. Mr. Davis testified claimant did not have an explanation for not following the process or not knowing the documentation. Mr. Davis testified claimant had been doing the invoicing process for at least two years. Claimant testified the employer was in the process of moving documentation to another location and she had a little trouble finding the documentation. Claimant testified she started looking in the new location but was unable to find it there. Claimant eventually found the documentation in less than five minutes. Claimant testified there was no discussion about her job being in jeopardy or that she might be disciplined.

Mr. Davis testified claimant received a coaching on February 4, 2015, for sending out duplicate e-mails. Claimant encountered an error when she sent the first e-mail. Mr. Davis testified that this error was something out of the ordinary and according to the employer's procedures, claimant should have contacted a supervisor or another employee to help with the issue. Claimant knew this was the procedure, but did not follow it. Claimant instead tried the process again, resulting in duplicate e-mails being sent out. Claimant did not think this was a warning and did not think her job was in jeopardy.

Mr. Davis testified claimant received a verbal warning on September 3, 2014, for not knowing and following the process of having a second set of eyes when there is no defined process for what she was doing. Claimant knew this was the procedure. Claimant testified there was a second set of eyes, but she did not disclose this at the time because she did not want the other employee to get in trouble. Mr. Davis testified that claimant was told that failure to follow processes may result in further disciplinary action, up to and including termination. Claimant testified she did not think this was a warning. Claimant also testified she was not told her job was in jeopardy. Claimant testified her supervisor at that time, not Mr. Davis, told her he was comfortable with her work. Claimant testified she did receive a job evaluation later that month that stated she was meeting her overall job expectations. Mr. Davis testified that evaluation was completed prior to September 3, 2014, it was just communicated with claimant after September 3, 2014.

Claimant testified she was never given any warnings and was never told her job was in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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:
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> 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.
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> (1) Definition.
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> 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 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). 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). 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 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).

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. The conduct for which claimant was

discharged was merely an isolated incident of poor judgment 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.

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Mr. Davis testified claimant received a verbal warning on September 3, 2014, for not following procedure; however, claimant denied this was a warning. Even if this was a warning, less than a month later, claimant received a positive job evaluation. This lends credibility claimant's understanding that that the occurrence on September 3, 2014, was not intended as a warning. Furthermore, when claimant failed to follow proper procedure on February 4, 2015, the employer did not issue a warning to claimant, they instead gave her a coaching. It is reasonable for claimant to believe that she had not received a warning for either incident as nothing was done in writing and the second incident was admittedly not a warning. Claimant reasonably did not believe her job was in jeopardy on May 19, 2015.

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 coaching or verbal warning is not similar to a written notification that claimant's conduct was repeated negligence or deliberation and is not dispositive of the issue of misconduct for the purpose of determining eligibility for unemployment insurance benefits. Benefits are allowed.

DECISION:

The June 16, 2015, (reference 01) unemployment insurance decision is reversed. Claimant 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.

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Jeremy Peterson
Administrative Law Judge

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Decision Dated and Mailed

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