

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CRYSTAL D FRENCH**  
Claimant

**CAUSEY & YE LAW PLLC**  
Employer

**APPEAL 17A-UI-00570-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/02/16  
Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge/Misconduct  
Iowa Code § 96.5(1) – Voluntary Leaving

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the January 12, 2017, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 20, 2017. Claimant participated. Employer participated through (representative) Jon Causey, Attorney-Partner, and Yang Yidi Ye, Attorney-Partner. Claimant's Exhibit A was entered and received into the record.

**ISSUE:**

Was the claimant discharged due to job connected misconduct or did she voluntarily quit her employment without good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an assistant/para-legal beginning on January 18, 2016 through September 5, 2016 when she was discharged.

The claimant had been given a performance evaluation in July 2016 that put her on notice that her job performance needed to improve. The claimant performed to the best of her abilities, but the area of immigration law was new to her.

On September 2, the claimant met with Mr. Causey at his request. Mr. Causey wanted the meeting to discuss a mistake the claimant had made when she mailed out documents belonging in one clients file, to another client. Prior to going into the meeting Mr. Causey had prepared a disciplinary write up for the claimant that would put her on probation for the following sixty days. The claimant admitted her mistake during the meeting. The claimant then turned the discussion toward the issue of her unpaid wages. Ms. Ye joined the conversation at some point and it became quite 'heated' between the parties. No profanity was used, but the claimant was insistent that she had been underpaid wages by the employer. The claimant raised her voice when speaking to the partners. The claimant signed the disciplinary write up given to her and the meeting ended. The claimant never told the employer she was quitting but she did return to

her desk and take some of her personal belongings home with her that evening. She did not turn in her keys to the office.

That weekend was the Labor Day holiday. The claimant contemplated quitting and went so far as to draft a resignation letter. Before she had made up her mind to send in the letter, she received a text message on Sunday, September 5, from Mr. Causey notifying her that she was being discharged. The final incident that led to the discharge was what Mr. Causey thought was her 'poor attitude' during their meeting on September 2. During the meeting the claimant never said should would not put forth her best effort going forward, nor did she use profanity when speaking to the partners. She did adamantly demand that she be paid all wages owed to her.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for no disqualifying reason.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

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).

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

The claimant had not told the employer she was going to quit or turned in any letter of resignation, or turned in her keys, or taken all of her belongings home prior to the employer telling her via text message that she was discharged. While the claimant may have intended to quit, the employer acted first and discharged her before the claimant had the chance to quit. Under these specific circumstances the claimant is considered to have been discharged and not to have voluntarily quit.

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). 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).

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 final act that led to the employer's decision to discharge was at the meeting on September 2, where the employer thought the claimant demonstrated a poor attitude. The claimant was upset and angry because she thought she had not been paid all wages owed to her. As a consequence, the conversation was heated and the claimant raised her voice louder than she normally spoke. These circumstances are simply are not sufficient job connected misconduct to disqualify the claimant from receipt of unemployment insurance benefits. An employee is allowed to ask for wages they believe are due to them. While the conversation may have been heated, and the claimant raised her voice, that simply is not substantial job connected misconduct to warrant a denial of benefits. The employer has not met their burden of proof to establish that claimant engaged in substantial job connected misconduct. Benefits are allowed.

**DECISION:**

The January 12, 2017, (reference 02) decision is reversed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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