

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CALLY A MOORE**  
Claimant

**APPEAL NO. 14A-UI-03766-S2**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**S T L CARE COMPANY**  
Employer

**OC: 03/16/14**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

S. T. L. Care Company (employer) appealed a representative's April 4, 2014 (reference 01) decision that concluded Cally Moore (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for January 21, 2015 in Cedar Rapids, Iowa. The claimant was represented by Jonathan Schmidt, Attorney at Law, and participated personally. The employer participated by Regina McHugh, Program Director; Andrew Wagg, Facility Administrator; and Lisa Mills, Therapy Coordinator. The employer offered and Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 3, 2013 as a full-time administrative assistant. The claimant had worked in customer service before but this was the first job of this type for her. The claimant signed for receipt of the employer's handbook on July 3, 2013.

On March 10, 2014 the employer issued the claimant a written warning for failure to complete her logs and taking extra breaks. The claimant admitted not getting her logs done but she did not admit to taking an extra break. She was helping a client find a pair of shoes by looking at ads in the newspaper. The claimant did not know this was outside her job duties. She thought she was supposed to help the clients. The employer notified the claimant that further infractions could result in termination from employment.

The claimant understood she was supposed to request time by notifying a member of management in writing. She always notified her program director. The program director instructed her to send her e-mails when she was not in the office because she would retrieve them at home. The program director told the claimant that the therapy coordinator was in charge if the program director was absent.

On March 17, 2014 the claimant was supposed to work from 7:30 a.m. to 4:00 p.m. As soon as the claimant arrived at work she sent an e-mail to the program director requesting to leave early that day. As soon as the therapy coordinator arrived, the claimant told her she sent a request to the program director about leaving early that day. The program director did not counsel the claimant to seek approval from someone else before she left. The program director talked to the claimant when she left work.

A female called the claimant around 8:00 a.m. on March 17, 2014. The claimant recognized the woman as being someone the claimant had processed termination paperwork on the week before. The female asked if she should come in for work on March 17, 2014. The claimant communicated the information she had available about the termination. The claimant knew the information was confidential but did not think it was confidential from the employee. The claimant did not have any confidentiality training as it relates to human resources.

On March 18, 2014 the employer terminated the claimant for terminating an employee and leaving early without authorization on March 17, 2014.

The claimant filed for unemployment insurance benefits with an effective date of March 16, 2014. She received \$4370 in benefits after the separation from employment. The employer participated personally at the fact-finding interview on April 3, 2014 by Regina McHugh and Andrew Wagg.

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

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). 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 Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The claimant was not trained properly by the employer. The claimant's mistakes was a result of her lack of training. Consequently the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's April 4, 2014 (reference 01) decision is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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