IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

JACKIE M BROCK Claimant **HOMEMAKERS PLAZA INC** Employer	**APPEAL 21A-UI-12523-ML-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 04/04/21** **Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the May 12, 2021 (reference 01) unemployment insurance decision that denied benefits based upon her separation from employment. The parties were properly notified of the hearing. A telephone hearing was conducted on July 8, 2021. The claimant, Jackie Brock, participated personally. The employer, Homemakers Plaza, Inc., participated through witnesses Wendy Mesenbrink and Devin Holley.

ISSUES:

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 sales associate and floor manager from December 10, 2018, to October 21, 2020. Devin Holley was claimant's immediate supervisor.

The employer has established rules of conduct to ensure a pleasant working environment for its employees and customers. Violation of any of the rules of conduct can result in disciplinary action up to and including termination.

Claimant was terminated for unprofessional behavior and work performance issues. The employer received numerous complaints from staff about claimant between August 20, 2020, and October 12, 2020. According to the complaints, claimant routinely left the sales floor during busy times, was unprofessional and rude to her employees and customers, and she consistently took extended breaks and lunches.

Mr. Holley testified to several of claimant's performance issues at hearing. As an example, Claimant had the lowest sales figures, when compared to other floor managers, between July and September, 2020. It is worth noting that floor managers were not expected to double as sales associates until May, 2020. Prior to the COVID-19 pandemic, floor managers were expected to sell products; however, it was not one of their main priorities. Floor managers did not have a sales quota they had to meet.

The final incidents which led to claimant's discharge occurred on or about October 11, 2020, and October 12, 2020. On October 11, 2020, two of claimant's co-workers approached Mr. Holley with three main complaints. First, the employees felt that claimant was disrespectful to them. Second, they relayed that claimant was failing to effectively communicate with them. Lastly, they reported that claimant was not following company guidelines with respect to lunch breaks. On October 12, 2020, a controller alerted Mr. Holley that claimant had inappropriately utilized her employee discount for her sister.

Later that week, Mr. Holley, Ms. Mesenbrink, and upper management conducted a meeting to discuss claimant's future with the company. The group ultimately decided that claimant's employment relationship with Homemakers would be terminated. Ms. Mesenbrink and Mr. Holley subsequently terminated claimant on October 21, 2020.

At hearing, Claimant testified she was unaware of how poor her sales metrics were until they were discussed with her at her termination meeting. Claimant testified to a number of reasons why her sales numbers were low. For instance, claimant testified that Homemakers was extremely busy once it re-opened on May 9, 2020. As a result, claimant would regularly have to step away from the sales floor to assist employees with any and all issues. Claimant testified that if an issue arose while she was in the middle of a sale, she would pass the sale off to one of her associates.

Claimant also acknowledged that she took extended breaks; however, claimant testified her breaks only appeared to be extended. Claimant explained that she was routinely pulled away from her breaks for various issues her employees were having. Once she had resolved the issue, claimant would return to her break. This gave off the appearance that her breaks were much longer than they actually were.

Claimant had only received one verbal or written warning prior to her termination. Said warning occurred on June 24, 2020, and was related to attendance issues.

While it may have been entirely reasonable and entirely within the employer's rights to discharge claimant, I find that claimant's discharge was the result of her inability to perform up to the standards established by the employer and not the result of any intentional efforts by claimant to underperform or inadequately manage her employees.

REASONING AND CONCLUSIONS OF LAW:

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

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).

871 IAC 24.32(4) provides:

> (4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

871 IAC 24.32(8) provides:

> (8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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). Further, 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).

I do not find that claimant's conduct or actions were intentional or were caused by claimant's carelessness which indicated a wrongful intent. Claimant's behavior does not rise to the level of misconduct. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). Reoccurring acts of negligence by an employee would probably be described by most employers as in disregard of their interests. *Greenwell v Emp't Appeal Bd.*, No. 15-0154 (Iowa Ct. App. March 23, 2016). The misconduct legal standard requires more than reoccurring acts of negligence in disregard of the employer's interests. *Id*. I find claimant's actions did not have any wrongful intent.

Further, a claimant's poor work performance does not disqualify her from receiving benefits. 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).

Claimant attempted to perform the job to the best of her ability but was unable to meet the employer's expectations. No intentional misconduct has been established, as is the employer's burden of proof. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

For these reasons, I conclude the employer failed to meet its burden of proof in establishing disqualifying job misconduct. As such, benefits are allowed.

DECISION:

The May 12, 2021 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

Michael J. Lunn
Administrative Law Judge
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July 30, 2021
Decision Dated and Mailed

mjl/lj