

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ASHLEY M SCHMIDT
Claimant

SENTRY INS A MUTUAL CO
Employer

APPEAL 20A-UI-11754-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/12/20
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

On September 21, 2020, the claimant filed an appeal from the September 15, 2020, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 17, 2020. Claimant participated and was represented by attorney Michael Galvin. Employer did not register for the hearing and did not participate.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in September 2018. Claimant last worked as a full-time operations support technician. Claimant's last day of work was on July 13, 2020. Claimant was terminated.

In March 2020, the United States declared a public health emergency due to the COVID 19 pandemic. Employer began requiring most of its employees to work remotely. Employer encouraged claimant to bring all of the equipment and materials from her work station home with her, including three monitors and a docking station. Claimant brought home her notes, but did not bring her three monitors and docking station because she felt she did not have room for the equipment.

Claimant tried to work remotely, but her Internet speed and lack of equipment did not allow her to perform adequately. At first, employer allowed claimant to just check email and attend online meetings. By June, other employees were going on leave and employer needed claimant to take on more work duties.

Toward the end of her employment, claimant discussed with an ergonomics employee the fact she had not brought all of her equipment home. A few days before her termination, employer gave claimant a hot spot to increase the speed of her Internet.

On July 13, 2020, employer terminated claimant stating she had not been cooperative in working remotely.

Employer never warned claimant that she needed to have a specific Internet speed or bring home necessary equipment or she would be terminated.

After her termination, claimant searched for work in customer service and is starting a new job shortly.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

The employer has the burden to prove the claimant was discharged for job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the

employer made the correct decision in ending claimant's employment, 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). Misconduct justifying termination of an employee and misconduct warranting denial of unemployment insurance benefits are two different things. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *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 is not 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).

In this case, claimant was terminated for her failure to bring home all of the necessary equipment to work remotely. 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 assess points or impose discipline up to or including discharge for the incident under its policy. The conduct for which claimant was discharged was an incident of poor judgment (a crowded house is better than being unemployed). However, employer never warned claimant that her failure to bring home her equipment would result in termination.

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.

The next issue is whether claimant is able to and available for work.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.1A, subsection 38, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Here, the claimant was able to and available for work and searched for customer service positions after being separated from employment. Claimant eventually found such a position and is starting her new job soon. Therefore, she is considered able to and available for work.

DECISION:

The September 15, 2020, (reference 01) unemployment insurance decision is reversed. Claimant was separated for no disqualifying reason. Claimant is able to and available for work. Benefits are allowed, provided claimant is otherwise eligible.



Christine A. Louis
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November 24, 2020
Decision Dated and Mailed

cal/mh