

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CARLIE R WRIGHT**  
Claimant

**COVERT ACTION LLC**  
Employer

**APPEAL 18A-UI-11047-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/14/18**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the November 5, 2018, (reference 01) unemployment insurance decision that denied benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was scheduled for November 28, 2018, at 3:00 p.m. Claimant participated in writing only. Employer did not follow the instructions on the hearing notice and did not register for the hearing or otherwise request a postponement. The record was held open until 3:15 p.m. to allow employer an opportunity to participate. Employer did not call in to register until 3:48 p.m. By that time, the record was closed.

**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 began working for employer in November 2017. Claimant last worked as a full-time substance abuse counselor. Claimant was separated from employment on October 15, 2018, when she was terminated.

Employer is a clinic that provides medication, counseling, and support for individuals recovering from opiate addiction. Employer does not have an employee handbook or other written policy that addresses performance expectations. Employer did not give claimant or others in her position adequate training on the duties of the position. Employer often expected claimant to cover the job duties of the program director in addition to maintaining her own large caseload.

When claimant was presented with deficiencies in her paperwork, she made the corrections as soon as possible.

In May 2018, employer reprimanded claimant regarding unsatisfactory performance. Claimant was warned that if her performance did not improve within one month she would be terminated. Claimant was not terminated the next month. Instead, she was asked to train new substance abuse counselors.

On October 11, 2018, the counseling supervisor met with claimant to review paperwork. The supervisor told claimant that her work was satisfactory.

Claimant planned to update her files on October 12, 2018, after meeting with the supervisor. However, on October 12, 2018, claimant was absent due to illness. A “team” review of the files was performed that day.

When claimant returned to work on October 15, 2018, she was terminated from employment.

### **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.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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 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).

In this case, claimant was terminated after performing the job to the best of her ability with the limited training and additional job duties she was given. Employer failed to establish claimant was terminated for job-related misconduct.

**DECISION:**

The November 5, 2018, (reference 01) unemployment insurance decision is reversed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Christine A. Louis  
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Decision Dated and Mailed

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