

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JESSICA J NOLTE

Claimant

APPEAL 19A-UI-01172-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CLAIRES BOUTIQUES INC

Employer

OC: 01/20/19

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 7, 2019, (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 held on February 26, 2019. Claimant participated. Employer participated through store manager Tammy Coleman. Claimant's Exhibit A was received.

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 on May 14, 2018. Claimant last worked as a full-time assistant manager. Claimant was separated from employment on January 11, 2019, when she was terminated.

Employer has a policy stating a sales associate cannot be left in the store unattended. Sales associates do not have the authority to conduct all necessary transactions on the cash register and are often minors. Claimant was aware of the policy and knew she could be terminated for violating the policy.

On January 1, 2019, claimant was working with one other employee, a sales associate. Claimant was upset as she had just returned from bereavement leave and thought she would be working with an employee named Devon. If claimant had been working with Devon, she would have been able to leave the store to take a break. Since claimant was working with a sales associate, it was against policy to leave. Claimant was also upset because Devon did not tell her she was trading shifts with the sales associate.

Claimant called store manager Tina Coleman and spoke to her about the situation. Claimant told Coleman she wanted to leave the store for a smoke break. Coleman told claimant that she could not leave the store under any circumstance. Claimant did not tell Coleman she was so upset that she needed someone to come into the store and replace her. After hanging up with Coleman, Devon sent claimant a text message that was insensitive about claimant's

bereavement leave. Claimant then went outside and took a smoke break, leaving the sales associate alone in the store. Claimant did not tell Coleman she left the store.

On approximately January 7, 2019, the sales associate reported to Coleman that claimant left her alone in the store on January 1, 2019.

Coleman reported the incident to upper management and human resources.

On January 11, 2019, employer terminated claimant's employment.

Claimant had never been previously disciplined for leaving the store unattended.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 left the store to take a smoke break with only a sales associate present. Claimant was aware she could be terminated for her conduct, and her store manager told her shortly beforehand that under no circumstance was she allowed to leave the store with only the sales associate present. The administrative law judge sympathizes with claimant's personal circumstances at the time, but the fact remains that claimant acted with deliberate disregard of employer's interests. Employer established claimant's actions amount to misconduct, even without prior disciplinary warning.

DECISION:

The February 7, 2019, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Christine A. Louis
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Decision Dated and Mailed

cal/scn