

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**LISA L GREENWOOD
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CASCADE IA 52033**

**SYSTEMS UNLIMITED INC
1556 - 1ST AVE S
IOWA CITY IA 52240**

**Appeal Number: 04A-UI-08085-H2
OC: 07-04-04 R: 03
Claimant: Appellant (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 20, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 1, 2004 at Dubuque, Iowa. The claimant did participate along with her husband Bruce Greenwood. The employer did participate through (representative) Mona Dowiat, Human Resources Specialist and Debra Murphy, counselor.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a counselor part-time beginning July 11, 2003 through July 2, 2004 when she was discharged for allegedly falsifying her time sheet on June 20, 2004. The

claimant alleges that she arrived at work that evening at 10:00 p.m. her regularly scheduled start time. The employee whom she was relieving, Debra Murphy, wrote on her time sheet that she left at 10:15 p.m. The claimant is adamant that she was on time to work that evening and that she did not falsify her time sheet by writing an incorrect start time on her time card. Ms. Murphy alleges that the claimant was fifteen minutes late to work that evening and that is why she wrote 10:15 p.m. as her ending time. The only evidence that the employer has to indicate the claimant was late to work on June 20, 2004 is the word of Ms. Murphy.

REASONING AND CONCLUSIONS OF LAW:

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

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).

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). The employer discharged the claimant and has the burden of proof to show misconduct. Misconduct serious enough to

warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988).

The employer's evidence does not establish that the claimant deliberately and intentionally acted in a manner she knew to be contrary to the employer's interests or standards. There was no wanton or willful disregard of the employer's standards. In short, substantial misconduct has not been established by the evidence. The only evidence that the claimant was late to work is the word of Ms. Murphy. That is contrasted with the credible testimony of the claimant that she was not late that day and that her Supervisor, Roberta Alrich, was fabricating reasons to discharge her because she had disagreed with her at an earlier staff meeting. The employer has the burden to establish misconduct. The testimony of Ms. Murphy alone fails to convince the administrative law judge that the claimant was in fact late to work on June 20, 2004 or that she falsified her time sheet for that day. Since the employer's evidence does not establish misconduct, benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The July 20, 2004, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/kjf