

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**KELI M LATHROP**

Claimant

**APPEAL NO. 12A-UI-03499-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GOOD SAMARITAN SOCIETY INC**

Employer

**OC: 02/12/12**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

Good Samaritan Society, Inc. filed a timely appeal from a representative's decision dated March 30, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on April 23, 2012. Claimant participated personally. The employer participated by Ms. Lori Welch, Human Resource Director, and Andrea Hodges-Burger, Housekeeping Supervisor. Employer's Exhibits One, Two and Three were received into evidence.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Ms. Keli Lathrop was employed by Good Samaritan Society, Inc. from April 22, 2011 until February 15, 2012 when she was discharged from employment. Ms. Lathrop worked as a part-time housekeeping assistant and was paid by the hour. Her immediate supervisor was Andrea Hodges-Burger.

A decision was made to terminate Ms. Lathrop based upon complaints that were made by other employees that the claimant was not doing her job and that the claimant was taking excessive breaks or lunch periods. Employees alleged that Ms. Lathrop was not carrying out the trash, not cleaning rooms and the claimant could not be found for substantial periods of time during her work shift. Because the claimant had been previously warned for similar conduct, a decision was made to terminate Ms. Lathrop from her employment. The employer believed the complaints of the other employees to be credible.

During the period in question Ms. Lathrop was temporarily assigned to clean in a different area of the facility. The claimant denies performing her duties in an unacceptable manner or below her capabilities. It is claimant's position that trash cans are often re-filled by residents shortly

after they are emptied and that she was not available on normal hall assignments because she had been temporarily assigned to work in another part of the facility. Claimant denies taking excessive breaks.

### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes conduct justifying termination of an employee and what conduct the denial of unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant the denial of job insurance benefits. Such misconduct must be "substantial." Based upon 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 1988).

In this matter the claimant appeared personally and provided sworn firsthand testimony. In contrast, the evidence in support of the employer is primarily hearsay in nature. Although hearsay is admissible in administrative proceedings, it cannot be accorded the same weight as sworn, direct testimony. In this matter the claimant testified with specificity denying the generalized allegations that had been made by other employees. The administrative law judge finds the claimant's testimony to be credible and not inherently improbable.

While the decision to terminate Ms. Lathrop may have been a sound decision from a management viewpoint, the evidence in the record is not sufficient to establish intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, providing the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated March 30, 2012, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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