

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ELIZABETH OBERHOFFER
Claimant

FALEY ENTERPRISES INC
Employer

APPEAL 21A-UI-09727-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of protest
Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin Code r. 871-24.23(10) – Approved Leave of Absence

STATEMENT OF THE CASE:

On April 6, 2021 the claimant filed an appeal from the March 30, 2021 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 22, 2021. The claimant participated personally. The employer participated through controller, Curran Smothers. The employer’s exhibits 1-3 were received into the record. The administrative law judge took administrative notice of the claimant’s unemployment insurance record.

ISSUES:

Was the claimant’s appeal timely?
Was the claimant able to and available for work?
Was the claimant on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant was hired January 15, 2018 as a staff accountant working for controller Curran Smothers. Mr. Smothers directed claimant to contact a customer with whom she had previous contact, and with whom there had been errors on the account made by Mr. Smothers and another staff accountant while they were covering for the claimant while she was out of the office. Mr. Smothers instructed claimant to ask the customer what amounts they thought were still open on several accounts; and to ask whether it would be okay to treat their seven accounts individually (which would require seven checks to pay), or to treat them as one account. Claimant left Mr. Smothers a note (Exhibit 1) essentially telling him that he should contact the customer himself. Later that day, Mr. Smothers directed claimant to work with their collections company to write off four bad debt accounts. Claimant responded with an email (Exhibit 2) essentially telling Mr. Smothers he should do it himself. Mr. Smothers went out to claimant’s desk to tell her to do those tasks she had been assigned to which she screamed among other

things, "I absolutely refuse." Claimant yelled insults for approximately five minutes when Mr. Smothers told her to get her stuff and leave the premises. Claimant asked if she was being fired. Mr. Smothers replied, "yes, you are insubordinate." Claimant continued to yell. Mr. Smothers asked another management employee to escort claimant off the property and left the vicinity himself in an attempt to defuse the situation.

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for a disqualifying reason. Benefits are denied.

As a preliminary matter, I find that Claimant did not quit. Claimant was discharged from employment.

Iowa Code § 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.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate

the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. 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). 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 impose discipline up to or including discharge for the incident under its policy.

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* 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). Further, 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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). Continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The question in this case was whether Mr. Smothers' request for claimant to contact the customer was a reasonable request and whether claimant had a good faith belief that she would be injured if he completed the task. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa Ct.App.1982)(an employee's failure to perform a specific task may not

constitute misconduct if such failure is in good faith or for good cause); *Woodbury County v. Emp't Appeal Bd.*, 683 N.W.2d 127 (Iowa App. 2004)(Unpublished).

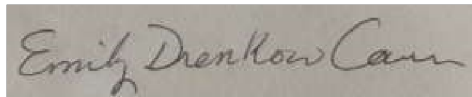
The claimant had been out of the office due to her father's passing. As a staff accountant with accounts payable and accounts receivable duties, the directed tasks were clearly a part of the claimant's job duties. Claimant did not have a good faith belief that she would be injured or that she should not complete the tasks assigned. She simply thought her boss should do it. Claimant's response in yelling when directed again to do the tasks, disrupting the workplace is further insubordination.

The claimant acted in a deliberate way to breach the duties of her employment contract. There was a willful or wanton action or omission of claimant which was a deliberate violation or disregard of standards of behavior which the employer has the right to expect of claimant.

As such, employer has provided proof that claimant was discharged for a current act of job related misconduct that would disqualify her from receiving benefits. Benefits are denied.

DECISION:

The March 30, 2021 (reference 02) unemployment insurance decision denying benefits is affirmed. The claimant was discharged for job related misconduct. Benefits are denied



Emily Drenkow Carr
Administrative Law Judge
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June 29, 2021
Decision Dated and Mailed

ed/kmj