

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

EBONI N JACKSON
Claimant

LABOR READY MIDWEST INC
Employer

APPEAL 15A-UI-09610-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/02/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 19, 2015, (reference 02) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A telephone hearing was held on September 10, 2015. Claimant participated in the hearing until the time available on her prepaid telephone expired. Employer participated through customer service representative Nicole Petersmith. Employer's Exhibit 1 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 was employed part-time as a laborer from August 22, 2013, and was separated from employment on May 19, 2015, when she was terminated.

Claimant worked at an assignment on May 16, 2015, without employer's knowledge or authorization to do so. On May 18, 2015, claimant sent employer numerous text messages asking why she had not been paid for her time on May 16, 2015. Employer explained to claimant that it had to verify her hours with the client as she had not followed the proper procedure for working that day. On May 19, 2015, claimant sent employer three text messages in the morning asking about the pay issue. Employer again reassured claimant it was working on the issue, but it would take time as claimant did not follow the proper procedure for working that day. Claimant then asked about another assignment, but was notified it had been filled. Claimant then sent employer a text message stating:

That's typical. I get overlooked again. When will it stop. I guess I gotta stop bein cool and expose the corruption in ur agency. Stating with being under paid with county wages when its federal. Cus im getting tired. I have plenty of proof. Dunn. Btw DON'T RESPOND TO THIS EITHER THNX

Claimant also called employer's office at least ten times within a two-hour period on May 19. Due to claimant's behavior, employer informed claimant it would no longer be working with her.

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:

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).

Claimant’s behavior of repeatedly contacting employer with a rude demeanor to ask the same questions and make the same comments after having already been given a response is misconduct without prior warning or specific policy violation. An employer should not have to tolerate an employee disrupting its business because the employee is unhappy with the terms of employment.

DECISION:

The August 19, 2015, (reference 02) 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.

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Decision Dated and Mailed

cal/pjs