

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JANE R WEDO**  
Claimant

**GOOD SAMARITAN SOCIETY INC**  
Employer

**APPEAL 15A-UI-13032-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/25/15**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the November 19, 2015, (reference 01) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A telephone hearing was held on December 14, 2015. Claimant participated. Employer participated through administrator Natasha Urinko and human resource employee Candace Moser. 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 full-time as a dietary assistant from November 20, 2002, and was separated from employment on October 9, 2015, when she was suspended and later terminated.

On October 4, 2015, claimant overslept. Employer called and woke claimant and she arrived late to work at 7:23 a.m. This was the first time claimant was late for work. Claimant handwrote on her time card that she arrived at her scheduled time of 7:00 a.m. That day, claimant failed to serve two residents a meal. The residents and/or residents' family members complained to another staff member.

On October 6, 2015, the staff member reported claimant's conduct on October 4 to administrator Natasha Urinko. Urinko suspended claimant on October 9, 2015, while she investigated the incident. Urinko reviewed surveillance footage and confirmed claimant arrived at work at 7:23 a.m. and that at least one resident was not served a meal. Urinko could not see the other resident on the surveillance footage. Urinko reviewed the residents' charting records and discovered claimant documented that both residents received a meal that day. When questioned, claimant admitted she arrived late and claimed she forgot and mistakenly wrote down her usual time on her time card. Claimant could not remember neglecting to serve two residents their meals that day.

Employer has a policy stating falsification of company records will result in termination. Claimant received a copy of the policy in the employee handbook.

Claimant was given written warnings in May 2015 for inconsiderate treatment of residents.

On October 21, 2015, after completing its investigation, employer terminated claimant's employment because of her conduct on October 4, 2015.

### **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).

Here, claimant falsified her time record, failed to feed two residents their meals, and falsified the residents' charts to reflect they had received their meals. This was in deliberate disregard of employer's interests in maintaining accurate records and protecting the health of the residents. Claimant alleges it was a bad day and she simply forgot to accurately record her time records. I do not find this testimony credible. Claimant asserts it was the first time she was late and her tardiness permeated the day. If this were true, claimant would not have simply forgotten that she had arrived late that day when recording her time. Claimant also alleges her failure to feed the residents was simply an oversight. Claimant had previously been warned about being inconsiderate of the residents during feeding time and was aware of what employer required of her to maintain employment. Even so, claimant failed to meet these expectations.

Employer has established claimant was terminated for job-related misconduct.

**DECISION:**

The November 19, 2015, (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.

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Decision Dated and Mailed

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