

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ALLISON DYER
Claimant

APPEAL NO: 18A-UI-10343-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CORRELL SHEERER BENSON ENGELS
Employer

OC: 09/09/18
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 4, 2018, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 30, 2018. The claimant participated in the hearing. Patrick Galles, Employer/Attorney, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time assistant for Correll, Sheerer, Benson, Engels, from January 6, 2018 to September 13, 2018. She was discharged because her work performance failed to meet the employer's expectations.

The claimant was placed on 90 day probation when she started in the Cedar Falls office March 5, 2018. The employer was concerned about her tardiness and attendance but did not provide any dates of incidents of tardiness or absenteeism and did not issue the claimant any warnings about her attendance. The employer was also dissatisfied with the claimant's work performance and extended her 90 day probation when the first probationary period expired in June 2018.

In late June 2018, a deed prepared by the claimant was returned from the recorder's office because of a typographical error. The claimant corrected the error without mentioning the situation to Real Estate Attorney Patrick Galles and directed the client to return to the office so he could sign the corrected document. The client lived three hours away from Cedar Falls and had to make an extra six hour round-trip to the office as a result of the claimant's error. The claimant sent the corrected deed back to the recorder but it was still wrong and consequently she had to complete an Affidavit of Surviving Spouse. She also had to correct the warranty deed again and did so by cutting and pasting from the original document. On August 24, 2018,

the matter was brought to the attention of the office manager who was notified the employer had to submit all corrected documents to the County Recorder and the employer was charged additional fees as a result. On approximately August 28, 2018, Mr. Galles met with the claimant about the incident and stated that was not how the employer did things and that the claimant's actions were a terminable offense. After speaking with the other partners in the office, Mr. Galles and Partner Kevin Engels notified the claimant her employment was terminated September 13, 2018.

The employer had discussed some of the claimant's errors with her but did not issue her any warnings. The claimant's performance improved for a period of time after these conversations but eventually she started making errors again.

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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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(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 proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. 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 Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant obviously made some clerical mistakes as well as some errors in judgment. While the employer had the right to terminate the claimant's employment, the question is whether her actions disqualify her from receiving unemployment benefits. The employer never warned the claimant about her work performance or attendance or documented the specifics of either of those concerns. Additionally, when the employer learned of the situation involving the error with the deed which resulted in the client having to make a six hour round-trip back to the office August 24, 2018, it did not take any action against the claimant until September 13, 2018, removing the incident from the realm of a current act of misconduct, as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The October 4, 2018, reference 02, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn