

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

Claimant	APPEAL 18A-UI-06347-H2T
Employer	ADMINISTRATIVE LAW JUDGE PUBLIC DECISION
	OC: 05/06/18 Claimant: Appellant (2)

Iowa Code § 235B.6(2)(d)(4) - Dependent Adult Abuse – access to confidential information
Iowa Code § 235B.8 - Dependent Adult Abuse – redissemination of confidential information
Iowa Code § 96.5(2)a – Discharge for Misconduct Iowa Code

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 4, 2018, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 28, 2018. Claimant participated. Employer did not participate.

ISSUES:

Should the hearing record and decision in this case be publicly disclosed?

Was the claimant discharged due to job-connected misconduct sufficient to disqualify her from receipt of unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant worked full time as a certified medication aid personal support professional beginning on November 18, 2001 through February 20, 2018 when she was discharged.

Claimant's adopted sister for whom she is the legal guardian lives at the location where the claimant was employed. On February 18, the claimant was accused of slapping her sister across the face. The claimant denied slapping or hitting the resident.

The employer notified the Iowa Department of Human Services (DHS) what had been reported to them. Initially DHS determined that the claimant had abused her sister and labeled her offense as "Confirmed/Not Placed." The claimant appealed and a hearing was held in front of an administrative law judge from the department of inspections. In a decision on April 25, 2018 DHS's decision was reversed and the determination was changed to unfounded. The claimant has no legal restriction on working in any nursing home or care center where a license is required. Claimant is not on any adult dependent abuse registry.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be addressed in this case is the effect of the confidentiality requirements of Iowa Code § 235B.6(2)(d)(4) and Iowa Code § 235B.8.

Iowa Code § 235B.8 prohibits the redissemination of dependent adult abuse information. Iowa Code § 235B.8 must be followed despite conflicting provisions of the Iowa Open Records Act (Iowa Code chapter 22), the Iowa Administrative Procedure Act (APA) (Iowa Code chapter 17A), and Iowa Employment Security Law (Iowa Code chapter 96). Iowa Code § 22.2(1) provides: “Every person shall have the right to examine and copy a public record and to publish or otherwise disseminate a public record or the information contained in a public record.”

The appeal documents, exhibits, decision, and audio recording in an unemployment insurance case would meet the definition of “public record” under Iowa Code § 22.1-3. Iowa Code § 17A.12(7) provides that contested case hearings “shall be open to the public.” Under Iowa Code § 96.6(3), unemployment insurance appeals hearings are to be conducted pursuant to the provisions of chapter 17A. The unemployment insurance rules provide that copies of all presiding officer decisions shall be kept on file for public inspection at the administrative office of the department of workforce development. Iowa Admin. Code r. 871-26.17(3).

In this case, it would defeat the purpose of Iowa Code § 235B.8 of restricting redissemination to permit the confidential information to be disclosed to the general public. Therefore, the public decision in this case is issued without identifying information. A decision with identifying information will be issued to the parties; but that decision, the audio record, and any documents in the administrative file shall be sealed and not publicly disclosed.

For the reasons that follow, the administrative law judge concludes 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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on 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 App. 1988).

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, employer incurs potential liability for unemployment insurance benefits related to that separation. The employer offered no testimony at the hearing. The claimant's DHS ruling is in her favor. The claimant very credibly testified that she did not slap or hit her sister. The employer has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

DECISION:

The June 4, 2018, (reference 02) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs