

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**VICKI D GASKILL**  
Claimant

**O'REILLY AUTOMOTIVE INC**  
Employer

**APPEAL 18A-UI-05508-NM-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/15/18**  
**Claimant: Appellant (2R)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the May 8, 2018, (reference 01) unemployment insurance decision that denied benefits based on her discharge for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on June 6, 2018. The claimant participated and testified. The employer participated through Store Manager Linsey Terrell.

**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 hired part time as a delivery specialist on May 22, 2014. On April 9, 2018, claimant was making a delivery when her vehicle rolled into the garage door of a customer. The employer learned about this incident when the customer called in to report the damage and offered to show the employer video footage of the incident. Terrell determined claimant was the driver in the video, as she recognized her jacket and confirmed she was the only employee making a delivery to the customer at the time in question. Claimant testified, if she was the individual in the video, she did not realize she had hit the garage door.

Terrell then relayed the information to the risk management department for a determination on what disciplinary action should be taken. Risk management directed Terrell to suspend claimant pending an investigation. Claimant was suspended from work indefinitely effective April 16, 2018. During her suspension, claimant would regularly contact Terrell to see if she could return to work. Terrell told claimant she had not yet heard from risk management, so she could not return. On May 29, 2018, Terrell learned risk management determined claimant could return to work. Terrell notified claimant of the decision that day and the two agreed claimant would return to work on June 11, 2018. Terrell testified she could have claimant return to work on June 4, but claimant was not willing to return at that time because she was assisting a

neighbor. Prior to this incident, claimant had been involved in prior accidents, but Terrell could not recall when those occurred or if claimant was warned about possible suspension or discharge. Claimant testified she believed her last accident had been so long ago that her accident record was now clear and did not realize another accident could result in termination.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was suspended from employment for no disqualifying reason.

Iowa Code section 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.

871 IAC 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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or

dishonesty without corroboration is not sufficient to result in disqualification. This rule is intended to implement Iowa Code section 96.5 and Supreme Court of Iowa decision, *Sheryl A. Cospers vs. Iowa Department of Job Service and Blue Cross of Iowa*.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cospers 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). 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).

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. 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.

The conduct for which claimant was discharged was an isolated incident. Claimant had been involved in prior accidents, but neither party could say precisely when the last accident occurred or what disciplinary action was issued. To the extent that it has not been established that the circumstances surrounding each accident were not similar enough to establish a pattern of misbehavior, the employer has only shown that claimant was negligent. "[M]ere negligence is not enough to constitute misconduct." *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 666 (Iowa 2000). A claimant will not be disqualified if the employer shows only "inadvertencies or ordinary negligence in isolated instances." 871 IAC 24.32(1)(a). When looking at an alleged pattern of negligence, previous incidents are considered when deciding whether a "degree of recurrence" indicates culpability. Claimant was careless, but the carelessness does not indicate "such degree of recurrence as to manifest equal culpability, wrongful intent or evil design" such that it could accurately be called misconduct. Iowa Admin. Code r. 871-24.32(1)(a); *Greenwell v. Emp't Appeal Bd.*, No. 15-0154 (Iowa Ct. App. Mar. 23, 2016). Ordinary negligence is all that is proven here. Because the employer has failed to establish disqualifying misconduct, benefits are allowed, provided claimant is otherwise eligible.

At the time of hearing information was provided indicating claimant could have returned to work on June 4, 2018, but declined to do so because she was helping a neighbor. The issue of whether claimant was able to and available for work the week of June 3, 2018 therefore must be remanded to the Benefit Bureau of Iowa Workforce Development for initial investigation and determination.

**DECISION:**

The May 8, 2018, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

**REMAND:**

The issue of whether claimant was able to and available for work the week of June 3, 2018 is remanded to the Benefit Bureau of Iowa Workforce Development for initial investigation and determination.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs