

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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| Claimant | <b>APPEAL 18A-UI-08854-CL-T</b>                 |
| Employer | <b>ADMINISTRATIVE LAW JUDGE<br/>DECISION</b>    |
|          | <b>OC: 07/29/18<br/>Claimant: Appellant (2)</b> |

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 20, 2018, (reference 02) unemployment insurance decision that denied benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on September 11, 2018. Claimant participated. Employer did not register for the hearing and did not participate.

**ISSUE:**

Was the claimant suspended for disqualifying job related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on June 8, 2017. Claimant last worked as a full-time direct support professional. Claimant was put on a disciplinary suspension from employment from July 19, 2018, through August 20, 2018.

Employer offers services to individuals with intellectual disabilities in the community and on site.

Employer has a policy prohibiting employees and clients from exchanging money or purchasing items for one other. Claimant was aware of the policy.

In April 2018, a client to whom claimant was assigned purchased items and attempted to give them to her. Claimant left the items at the worksite and explained to the client he could not buy things for staff members. Claimant reported the incident to management. The client tried a few times thereafter to purchase items for claimant. Claimant and other staff members reported the incidents to management.

At some point, the client was in a meeting with at least one supervisor and a case manager. The client reported that he was giving claimant money and buying her cigarettes and food. On July 19, 2018, employer informed claimant she was being suspended without pay pending an investigation.

On July 26, 2018, employer met with claimant and questioned her regarding the allegations. Claimant denied the allegations and employer indicated it believed her. However, employer had reported the allegations to an outside agency and was waiting for the agency's finding before it would return claimant to work.

By August 20, 2018, employer received the finding from the outside agency and allowed claimant to return to work.

### **REASONING AND CONCLUSIONS OF LAW:**

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

Iowa Code § 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 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).

In this case, employer did not establish claimant violated any of its policies or was suspended for any disqualifying misconduct.

**DECISION:**

The August 20, 2018, (reference 02) unemployment insurance decision is reversed. Claimant was temporarily separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Decision Dated and Mailed

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