

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ZORICA PILIPOVIC**  
Claimant

**APPEAL NO. 07A-UI-10345-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE MAYTAG CO**  
Employer

**OC: 12-24-06 R: 12  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the November 2, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 28, 2007. The claimant did participate. The employer did not participate.

**ISSUE:**

Was the claimant discharged for work-related misconduct?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a braser full time beginning August 2, 2004 through September 6, 2007 when she was discharged.

The claimant was sick and unable to attend work from August 31 to September 5. She reported her absences to her employer. The claimant was suffering from gastritis and sought medical help from her physician who took her off work. The employer expected the claimant to provide a doctor's note or excuse on their form within five days of the first day she missed work, notwithstanding the fact that the claimant was too ill to go to the employer's physical location. The claimant could not get anyone at the employer's place of business to fax the proper form she needed to have completed directly to her doctor's office. The claimant was too ill to work or to physically report to the employer's place of business from August 31 through September 5. The claimant went to the employer's place of business with a doctor's note excusing her from work on September 6 but the employer still requested the claimant use their form to be taken off work. On September 6, the employer would not give the claimant the correct form she was to have her physician fill out because more than five days had passed since she first called in sick. The claimant was then told she was discharged for not having her physician fill out the employer's form within five days of her becoming ill.

## REASONING AND CONCLUSIONS OF LAW:

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

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.

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.

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).

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 claimant was so ill she was not able to go to the employer's place of business and pick up the specific form the employer wanted her physician to fill out regarding the claimant's absence due to illness. The claimant did otherwise report her absence due to illness. A claimant who is physically unable to pick up and fill out the form has not committed misconduct.

See, *Gimbel v. EAB*, 489 N.W.2d 36 (Iowa App. 1992) where a claimant's late call to the employer was justified because the claimant, who was suffering from an asthma attack, was physically unable to call the employer until the condition sufficiently improved.

**DECISION:**

The November 2, 2007, reference 01, decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/css