

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ANDREW CLEMONS**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL 20A-UI-10033-J1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/24/20**  
**Claimant: APPELLANT (2)**

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

**STATEMENT OF THE CASE:**

On August 17, 2020, the claimant filed an appeal from the August 5, 2020, (reference 02) unemployment insurance decision that denied benefits based on carelessness at work. The parties were properly notified about the hearing. A telephone hearing was held on September 30, 2020. Claimant participated. Employer notified this agency it did not want to not participate.

**ISSUE:**

Did claimant commit 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 for the second time in September 2009. Claimant had previously work for Hy-Vee for a seven-year period. Claimant last worked as a full-time assistant manager. Claimant was separated from employment on May 5, 2020, when the Store Director discharged claimant for carelessness.

A couple of days before May 5, 2020 claimant was working at a Hy-Vee location. The claimant was asked by another employee to put a deposit bag with money and checks from a cash draw into the safe. Claimant agreed. Claimant was working with customers at the time. Claimant put the deposit bag under a counter out of sight and continued to assist customers. After about one-half hour he remember that he had not put the bag in the safe. He did not remember where he placed the deposit bag. Claimant told the assistant store director who reviewed video and located where the claimant had placed the bag and the bag with all the contents were found and put in the safe.

Claimant was fired by the store director for carelessness. Claimant had not had any prior warning concerning carelessness with the deposit bag or similar accounting/money issues.

## REASONING AND CONCLUSIONS OF LAW:

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 to prove the claimant was discharged for job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer made the correct decision in ending claimant's employment, 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 justifying termination of an employee and misconduct warranting denial of unemployment insurance benefits are two different things. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

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 is not 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).

Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

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. The employer has the burden of proof in establishing disqualifying job misconduct. *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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial."

The administrative code makes it clear, therefore, that acts of carelessness or negligence must be sufficiently recurrent and not merely isolated to rise to the level of culpable or intentional misconduct. See *Infante v. Iowa Department of Job Service*, 364 N.W.2d 262, 265 (Iowa App. 1984). The administrative code does provide, however, that past acts and warnings can be used to determine the magnitude of a current act of misconduct. 370 Iowa Administrative Code § 4.32(8)(1985). *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986)

In this case, claimant misplaced a deposit bag while he was helping customers. He placed the bag out of sight so it would not be taken. When he could not remember where he put it he informed the assistant store director. The assistant store director looked at store video and saw where claimant had placed the bag and the deposit bag was located. The deposit bag was found and contents placed in the safe. [Unlike what happen to Uncle Billy in Frank Capra's 1946 movie *It's a Wonderful Life*.]

The claimant had an, at most, isolated act of being careless. The claimant did not commit misconduct that would disqualify him for unemployment insurance benefits.

**DECISION:**

**Regular Unemployment Insurance Benefits Under State Law**

The August 5, 2020, (reference 02) unemployment insurance decision is reversed. Benefits are payable, provided claimant is otherwise eligible.



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James F. Elliott  
Administrative Law Judge

October 1, 2020  
Decision Dated and Mailed

je/scn