

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**STEPHANIE A MINOR**  
Claimant

**REM IOWA COMMUNITY SERVICES INC**  
Employer

**APPEAL 16A-UI-11063-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/18/16**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 7, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on October 27, 2016. The claimant, Stephanie A. Minor, participated. The employer, REM Iowa Community Services, Inc., participated through Angel Waters, program director. Claimant's Exhibits A through C were received and admitted into the record.

**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 employed full time, most recently as a direct support professional, from June 27, 2011, until September 22, 2016, when she was discharged for wearing open-toed shoes to work. On September 15, claimant and three of her clients came into the employer's main offices. Claimant was wearing open-toed shoes. That day, the area director instructed claimant to change her shoes. It is unclear whether claimant followed this instruction that day. However, one week later, claimant came back into the main office wearing open-toed shoes.

The employer maintains a personal appearance policy that prohibits employees from wearing open-toed shoes. Waters testified that employees are prohibited from wearing open-toed shoes for safety reasons, as some of the clients use wheelchairs, walkers, or other mobility-assisting devices that could seriously injure exposed toes or feet. Claimant was aware of this policy, and she acknowledged signing a copy of the policy each year that she was employed. However, this policy was not strictly enforced throughout claimant's employment. Claimant testified that she received her first warning for wearing open-toed shoes in violation of the personal appearance policy in 2016. Waters testified that on June 16, 2016, claimant attended a team meeting at which she signed the personal appearance policy. On July 7, 2016, claimant received a written warning for wearing flip-flops to work on June 27, June 29, June 30, July 5,

and July 7. Additionally, claimant came to work wearing inappropriate footwear and was instructed to change her shoes on July 18, July 27, August 2, and August 3.

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

For the reasons that follow, the administrative law judge concludes claimant was discharged for disqualifying, job-related misconduct. Benefits are withheld.

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.

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).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. While the personal appearance policy and its prohibition on open-toed shoes may not have been enforced throughout claimant's employment, the employer began enforcing this policy in the summer of 2016 and claimant received repeated verbal instructions and warnings for failing to comply with it. The employer has presented substantial and credible evidence that claimant wore improper footwear to work after having been warned. This is disqualifying misconduct. Benefits are withheld.

**DECISION:**

The October 7, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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