

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES D DIBELLO**  
Claimant

**APPEAL NO. 17A-UI-08383-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CROSSMARK INC**  
Employer

**OC: 07/09/17**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Crossmark (employer) appealed a representative's August 7, 2017, decision (reference 02) that concluded James DiBello (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 1, 2017. The claimant participated personally. The claimant participated personally and through Ryan Vogel, his former supervisor. The employer participated by Theresa Moran, Employee Relations Partner. Exhibit D-1 was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 25, 2015, and at the end of his employment he was working as a full-time retail supervisor. The employer provided employees for food demonstrations to other companies. The claimant signed for receipt of the employer's handbook on September 16, 2015. The employer did not issue the claimant any warnings during his employment.

The claimant was supervising an employee who used the bathroom frequently. He sought guidance from two of his superiors. Both told him that an employee may use the bathroom as often as they need and the employee does not need a doctor's note to use the bathroom.

On July 11, 2017, the employee brought the claimant a copy of a doctor's note allowing her to use the restroom. The claimant told her it was not necessary because she could use the bathroom whenever it was needed. He told her to keep her copy in case she required it but he was going to toss his copy. The claimant threw his copy away.

On July 13, 2017, one of the claimant's superiors who told him a doctor's note was not necessary terminated him for not sending the doctor's note to the accommodation team. This policy was not in the handbook.

The claimant filed for unemployment insurance benefits with an effective date of July 9, 2017. The employer provided the name and number of Kathy O'Leary as the person who would participate in the fact-finding interview on August 4, 2017. The fact finder called Ms. O'Leary but she was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer did not respond to the message. The employer provided some documents for the fact finding interview. The employer did not identify the dates or submit the specific rule or policy that the claimant violated which caused the separation.

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

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The employer did not provide any documentation of a rule the claimant violated. The claimant's supervisor advised the claimant of what do in the final situation. The claimant was terminated for following his supervisor's advice. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's August 7, 2017, decision (reference 02) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs