

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DENISE KACK**

Claimant

**APPEAL 19A-UI-09429-CL**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LINN MAR COMMUNITY SCHOOL DISTRICT**

Employer

**OC: 11/03/19**

**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

On November 30, 2019, the claimant filed an appeal from the November 19, 2019, (reference 01) unemployment insurance decision that denied benefits based on a separation from employment. The parties were properly notified about the hearing. A hearing was held in Cedar Rapids, Iowa, on January 28, 2020. Claimant participated. Employer participated through human resources generalist Heather Jordan and school facilitator Valerie Lawrence. Claimant's Exhibits A through L were received. Employer's Exhibits 1 through 6 were received.

**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 began working for employer on August 1, 2007. Claimant was separated from employment on November 4, 2019, when she was terminated.

Employer has a policy prohibiting insubordination. [Employer's Exhibit 5] Claimant was aware of the policy.

Claimant worked for employer as a building secretary. A building secretary is the first point of contact with staff, students, and the community each day and responds to numerous inquiries from those stakeholders throughout each day. A building secretary also has many other responsibilities that keep the school running smoothly. [Claimant's Exhibit L] There is no dispute that claimant did an exemplary job in performing these duties.

Claimant entered into an agreement with employer for the 2019-2020 school year. The agreement allows claimant two days of personal leave for the school year. The agreement provides that claimant may apply for leave without pay, but that it may or may not be granted for reasons deemed appropriate by the Superintendent or other designee. [Claimant's Exhibit H]

Claimant applied for and was approved to take unpaid leave on two separate occasions in April and June of the 2018-2019 school year.

Claimant has triplet grandchildren who reside in Colorado. Claimant was planning a trip to California in October 2019, and wanted to stop and spend a few days with her grandchildren on the way home. Claimant planned to use her two personal days and requested additional unpaid leave to make this trip possible.

On July 31, 2019, claimant submitted a request to take four days of unpaid leave. [Employer's Exhibit 2] On August 5, 2019, employer denied the request as it had already allowed claimant to take unpaid leave on two separate occasions within the previous six months.

On August 13, 2019, claimant re-submitted her request. This time, claimant requested to take two unpaid days of leave on October 31 and November 1, 2019. Employer denied the request again. Principal Tina March told claimant she did not understand why the human resource department denied claimant's request and suggested claimant take the trip and call in sick. Claimant stated she would not do something like that.

On August 18, 2019, claimant sent an email to the human resource department asking for reconsideration of the decision. [Claimant's Exhibit A] Employer did not reconsider its decision.

At the beginning of October 2019, school facilitator Valerie Lawrence overheard claimant telling other employees that she planned to take the trip and be absent even though her request for unpaid leave was denied. Lawrence discussed the issue with the human resource department, who informed Lawrence that being absent those two days was grounds for termination.

On October 10, 2019, Lawrence relayed this information to claimant. Claimant stated she hoped she would be given a warning instead. [Claimant's Exhibit C]

On October 19, 2019, claimant sent an email to an employee in the human resource department asking for reconsideration of her request and asking if employer planned on firing her. [Claimant's Exhibit B]

October 22, 2019, principal Tina March, school facilitator Valerie Lawrence, and union representative Patricia Tally tried to meet with claimant about the issue. Claimant declined to meet.

On October 23, 2019, Lawrence met with claimant and gave her an October 16, 2019, letter that states, in relevant part:

As I explained to you, the days you requested for unpaid leave were denied and that if you decided to be gone anyway, that behavior would violate policy and be grounds for immediate termination.

Therefore, this letter will serve as written notice that you are aware of the consequences of deliberate insubordination. [Employer's Exhibit 3]

Employer believed claimant was going to be absent, regardless of the warning. Therefore, employer arranged for a parent volunteer to be present in the office on October 31 and November 1, 2019.

Claimant went on her trip. Claimant was absent on October 31, 2019. At 7:17 a.m., claimant sent Principal March a text message stating she would not be in. When March asked the reason for her absence, claimant did not respond. On November 1, 2019, claimant sent a text message stating, "Bad night. Will not be in. See you Monday." [Claimant's Exhibit D]

On Monday, November 4, 2019, employer terminated claimant's employment.

Claimant had no previous disciplinary actions for attendance or insubordination.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

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).

This is not an attendance case. This is a case regarding insubordination. Claimant was an integral part of the school operation and employer had already granted claimant unpaid leave on two occasions in the previous six months of the request being made. Employer explicitly told claimant on numerous occasions that her request to take unpaid leave was denied. Claimant told other employees she would go on the trip anyway. Employer explicitly warned claimant on several occasions that if she were to take the trip and miss work, it would be grounds for immediate termination. Claimant chose to test employer's warning and took the trip. This was not an isolated incident of poor judgment. Claimant was fully aware of what the consequences of her actions would be.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Here, employer established claimant refused to follow employer's reasonable instructions and was aware doing so would result in immediate termination. Claimant's actions were in deliberate disregard of employer's interests.

Employer established claimant was terminated for misconduct.

**DECISION:**

The November 19, 2019, (reference 01) unemployment insurance decision is affirmed. The 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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January 31, 2020  
Decision Dated and Mailed

cal/scn