

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TRAVIS D ANDERSON
Claimant

WELLS ENTERPRISES INC
Employer

APPEAL 18A-UI-04978-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/18/18
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from the April 19, 2018, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 16, 2018. Claimant participated. Employer participated through Dan Stockmaster, human resources generalist and was represented by Roxanne Rose of ADP. Employer's Exhibit 1 was admitted into the record.

ISSUES:

Was the claimant discharged due to job connected misconduct sufficient to disqualify him from receipt of unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an operations supervisor II beginning on December 12, 2005 through March 23, 2018 when he was discharged. The claimant was discharged for allegedly sending inappropriate texts to a subordinate employee. That employee was about to be discharged in March 2018 for insubordination when she alleged that claimant had sent her inappropriate texts in 2016 and 2017. The claimant denies ever sending any inappropriate text at all to the complaining subordinate or any employee. The employer's only firsthand witness had not read or seen any of the alleged inappropriate text messages. No copies of the text message were offered at the hearing.

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 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). 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).

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, employer incurs potential liability for unemployment insurance benefits related to that separation. The employer simply has not established that the claimant ever sent any inappropriate text message to any employee at all. The employer did not even offer copies of the supposedly inappropriate text messages at the hearing. Under these circumstances the employer has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

DECISION:

The April 19, 2018, (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs