

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VALERIE M DECKER
Claimant

APPEAL NO. 10A-UI-11875-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CHEROKEE COMMUNITY
SCHOOL DISTRICT**
Employer

**OC: 07/18/10
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Cherokee Community School District (employer) appealed a representative's August 13, 2010 decision (reference 01) that concluded Valerie Decker (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 7, 2010. The claimant was represented by John P. Laughlin, Attorney at Law, and participated personally. The employer was represented by Stephen Avery, Attorney at Law, and participated by John Chalstrom, Superintendent of Schools. The claimant's husband, Brian Decker, and John M. Laughlin observed the hearing. The claimant offered and Exhibit A was received into evidence. The employer offered and Exhibit One 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 having considered all of the evidence in the record, finds that: The claimant was hired on February 2, 1999, as a full-time Middle School secretary and technology secretary. On July 1, 2010, the claimant became just a Middle School secretary. The employer did not issue the claimant any warnings during her employment.

The principal told the claimant about an e-mail sent to him about technology duties the claimant should perform but did not show the claimant the e-mail. On July 9, 2010, the claimant sent the superintendent an e-mail thanking him for her job as Middle School Secretary and reminding him that her new contract did not include technology duties. On July 12, 2010, the superintendent and claimant met. The principal was present at the meeting but was told by the superintendent not to speak. The superintendent wanted the claimant to move, connect, and dust computers among other duties. The claimant explained that those were duties she performed as a technology secretary, but her job was so busy as a middle school secretary that

she did not have time to do other work, too. The claimant did not refuse to do the work but discussed her limitations. The claimant left work ill on July 12, 2010.

On July 13, 2010, the claimant properly reported illness. On July 14, 2010, the claimant arrived at work. The superintendent placed the claimant on paid administrative leave and told her he was recommending to the Board of Education that she be terminated. On or about August 16, 2010, the employer terminated the claimant for insubordination.

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:

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.

871 IAC 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 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).

An employer may discharge an employee for any number of reasons or no reason at all, 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. Inasmuch as employer had not previously warned claimant about any of the issues leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's August 13, 2010 decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw