

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CATHERINE E KRIEGER
Claimant

GREENE COUNTY MEDICAL CENTER
Employer

APPEAL 15A-UI-10733-CL
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/23/15
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 17, 2015, (reference 01) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A hearing was held on November 23, 2015. Claimant participated and was represented by attorney, Michael Carroll. Employer participated through chief operating officer, Christa Simons, and chief executive officer, Carl Behne, and was represented by attorney, Emily Reiners. Employer's Exhibits 1 through 9 were received. Claimant's Exhibits A through D 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 was employed full-time as a director of human resources from May 14, 2014, and was separated from employment on August 28, 2015, when she was terminated.

On June 17, 2015, employer informed claimant she was required to direct all legal questions to attorney Emily Reiners. Claimant had previously been working with attorney, Kami Petitgoue, on legal issues, and felt more comfortable going to her with questions relating to employment law. Sometime thereafter, claimant discussed the issue of who she could go to for legal counsel with employee, Tracy Warner. Warner informed chief executive officer, Carl Behne, that claimant discussed the issue with her.

On June 25, 2015, chief operating officer, Christa Simons, gave claimant a performance evaluation and rated her performance as above average in every category.

On July 9, 2015, employer issued claimant a written warning for submitting requests for a wage increase for two subordinate employees prior to the employees' respective anniversary dates and questioning the directive to run all legal issues through attorney, Emily Reiners. The corrective action form allowed claimant to provide comments in response to the written warning within 14 days.

In a separate meeting, claimant informed Behne of her concerns with directing all legal questions to Reiners. Behne told claimant he would consider her concerns.

On July 22, 2015, claimant wrote a response to the July 9, 2015, corrective action. Claimant addressed her concerns with working with Reiners on employment law issues. Employer decided to terminate claimant based on her response.

On August 7, 2015, Simons met with claimant to discuss her progress in response to the July 9, 2015 corrective action. Employer discussed work deadlines and made vague references to claimant being disrespectful and unprofessional in interactions with others. Employer then began gathering written statements from individuals who had brought up with concerns with claimant's professionalism earlier in 2015.

On August 28, 2015, after the statements had been gathered, employer terminated claimant's employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason.

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).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. 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. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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).

Here, employer terminated claimant for resisting a directive from her supervisors. However, claimant's conduct occurred over one month before she was terminated. This is not a current act of misconduct.

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

An unpublished decision held informally that two calendar weeks or up to ten work days from the final incident to the discharge may be considered a current act. *Milligan v. Emp't Appeal Bd.*, No. 10-2098 (Iowa Ct. App. filed June 15, 2011).

Employer did not base its termination decision on complaints about claimant's professionalism that were made earlier in 2015. Had employer believed the specific conduct complained of warranted termination, it would not have given claimant a positive performance review in June and would have at the very least addressed the specific conduct in claimant's July written warning. Employer did neither. Employer gathered the written statements in an attempt to bolster the decision it had already made to terminate her employment.

Employer may have had good business reasons to terminate claimant, but it failed to establish it terminated claimant for a current act of misconduct.

DECISION:

The September 17, 2015, (reference 01) unemployment insurance decision is reversed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

cal/pjs