

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**RENEE GLASPIE**  
Claimant

**APPEAL 21A-UI-10045-WG-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEYS MARKETING COMPANY**  
Employer

**OC: 12/27/20**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.4(3) – Able & Available for Work

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the March 29, 2021 (reference 02) unemployment insurance decision that denied benefits based upon a finding that claimant was discharged from employment due to job-related misconduct. The parties were properly notified of the hearing. A telephone hearing was held on June 29, 2021.

The claimant, Renee Glaspie, participated personally. The employer, Casey's Marketing Company, failed to register for or participate in the hearing. No exhibits were offered and the evidentiary record closed at the end of the telephone hearing.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Did claimant voluntarily quit the employment with good cause attributable to employer?  
Is claimant able and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time by the employer as kitchen help. Claimant made doughnuts, cooked breakfast items, and prepared sub sandwiches for customers during her employment with this employer. Claimant began working for the employer on August 4, 2020 and last worked on February 10, 2021.

Claimant testified that she was notified on February 13, 2021 that she was discharged for insubordination. No further explanation was provided by the store manager or the employer as to the basis for discharge. Claimant testified that she does not believe she was insubordinate to her superiors with this employer. Rather, she believes she was retaliated against because she made a report against a co-employee for unsanitary work conditions in the Casey's kitchen area. Within two days of reporting the unsanitary conditions, claimant was being disciplined and was subsequently discharged for alleged insubordination.

The employer failed to register for the hearing or offer any evidence at the time of hearing. Claimant denies that she voluntarily quit her job and I find that claimant did not voluntarily quit her employment with this employer. Rather, she was discharged by the employer. I further find that the employer failed to produce any evidence of the specific acts or omissions of claimant that were considered to be insubordinate and the basis for her discharge. Ultimately, I find that the employer failed to prove the basis for discharge or any acts of insubordination or misconduct by claimant.

Claimant provided un rebutted testimony that she has been physically and mentally able to work since her separation on February 13, 2021. Claimant provided un rebutted testimony that she has been available for work since her separation on February 13, 2021. Claimant provided un rebutted testimony that she has earnestly and actively sought employment since her separation on February 13, 2021. In fact, claimant has located alternate employment and was scheduled to begin employment with a new employer on June 30, 2021. I accept claimant's testimony as credible and find that claimant has been able and available for work since her separation on February 13, 2021. I find that claimant has earnestly and actively sought employment since that date.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

As a preliminary matter, I find that Claimant did not quit. Claimant was discharged from employment.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). 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, it incurs potential liability for unemployment insurance benefits related to that separation. 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). A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* 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). Further, 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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). Continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

In this case, the basis for discharge given by the employer was insubordination. The claimant denies any acts of insubordination toward the employer or a superior. Claimant has no disciplinary history for insubordination with this employer.

The employer offered no evidence and failed to establish willful or wanton action or omission of claimant which was a deliberate violation or disregard of standards of behavior which the employer has the right to expect of claimant. The employer failed to prove claimant acted with 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.

As such, employer has failed to prove that claimant was discharged for any current act of job-related misconduct that would disqualify her from receiving benefits. Benefits are allowed.

**DECISION:**

The March 29, 2021 (reference 02) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Claimant has been able and available for work since the date of separation on February 13, 2021. Benefits are allowed, provided she is otherwise eligible.



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William H. Grell  
Administrative Law Judge

July 9, 2021  
Decision Dated and Mailed

whg/kmj