

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**STACEY H MILLER**  
Claimant

**CASEY'S MARKETING CO**  
Employer

**APPEAL 15A-UI-04917-L-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/15  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the April 20, 2015, (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on May 15, 2015. Claimant participated. Employer participated through area supervisors, Connie Sublette and Sandy Hawkins. The employer's documents were not admitted to the hearing record as they were not relevant, redundant, or illegible.

**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 store manager from January 2011, and was separated from employment on March 23, 2015, when he was discharged. Sublette had asked her to strip and clean the store tile floor two weeks earlier and told claimant she had been with the company 34 years and would "win." Claimant said they would do their best. There were 64 broken tiles in the floor and claimant, her assistant manager, and two other employees all worked over the course of two weeks to clean the floor using tools and cleaning supplies available to them, including scrubbing while on their hands and knees. When Sublette arrived at the store on March 23 she intended to give claimant a written warning and one-day suspension because the floor was not cleaned to her standards. Claimant has multiple sclerosis and told Sublette of the consequence being on her hands and knees scrubbing has on her condition. She also described the efforts she and other employees made to clean the floor, and told her "If you are going to fire me, then fire me because I cannot do that." She did not swear. Sublette told her she was fired and went to her car to complete other paperwork. This was the sole reason for the separation.

## 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 § 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 the 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.

Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that

individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552 (Iowa Ct. App. 1986).

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. Inasmuch as the claimant attempted to perform the job duty to the best of her ability but was unable to meet Sublette's expectations, 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.

**DECISION:**

The April 20, 2015, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The benefits claimed and withheld shall be paid, provided she is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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