

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**YOLANDA L DINGS**  
Claimant

**KURTZ HARDWARE CO**  
Employer

**APPEAL 15A-UI-00589-H2T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/21/14**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge/Misconduct  
Iowa Code § 96.5(1) – Voluntary Leaving

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the January 14, 2015, (reference 08) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 9, 2015. Claimant participated Keegan. Employer did not participate.

**ISSUE:**

Was the claimant discharged due to job connected misconduct or did she voluntarily quit her employment without good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an estimator beginning on June 2, 2014 through December 15, 2014. The claimant was late to work and missing work to care for her ill child and to insure that her child made it to school when he missed the bus. She received no warnings about her attendance. She was told to come up with a plan to present to Bob regarding what hours she was going to work. She was not allowed to work after December 15, 2014. She submitted her plan to Bob on December 21 but he would not meet with her to discuss it until January 5, 2015. On January 5 she was simply told her plan was not 'good enough.' The claimant asked to be put back to work repeatedly including on December 21 and on January 5. She was not given any specifics as to what was required in order for her plan to be acceptable. During the fact-finding interview, the employer provided that the claimant's employment had ended on December 15, 2014.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for no disqualifying reason.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

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).

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

The claimant did not voluntarily quit. She asked to work, but the employer would not allow her to work. Under these circumstances the separation is a discharge and not a voluntary leaving of employment.

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).

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 claimant had no warnings about her attendance. The claimant presented her plan as required but was still not allowed to work. The employer has not met the burden of proof to establish that claimant engaged in misconduct sufficient to disqualify her from receipt of unemployment insurance benefits. Benefits are allowed.

**DECISION:**

The January 14, 2015 (reference 08) decision is reversed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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