

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GEORGIA V SANDERS

Claimant

APPEAL 15A-UI-14187-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LUTHERAN SERVICES IN IOWA INC

Employer

OC: 11/22/15

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 15, 2015, (reference 01) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A telephone hearing was held on January 15, 2016. Claimant participated. Employer participated through family safety risk and permanency (FSRP) supervisor, Denise Miller and project manager, Bobbi Bartels.

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 an FSRP care coordinator from August 17, 2015, and was separated from employment on November 25, 2015, when she was terminated.

As an FSRP care coordinator, claimant was assigned to work with families in Iowa to help them provide their children safety and permanency. One of claimant's job duties was to transport parents and children. Claimant was aware that she could be terminated for violating Iowa law. Employer informed claimant that Iowa law mandates that children under one year of age be transported in a rear facing car seat.

On November 16, 2015, claimant was unexpectedly asked to transport a mother and her two-month old baby. Claimant had just come from the grocery store and her backseat was full of groceries. Because of the groceries, there was no room for the child to ride in the car seat in the back of the vehicle. Claimant drove her car with the mother riding in the front seat while holding her two-month old baby on her lap. Claimant was aware that if she got into an accident, the baby could have been killed.

The mother reported claimant's conduct to employer. On November 19, 2015, claimant admitted to the conduct, but stated she had been transporting children for many years and no one had ever been hurt.

Employer terminated claimant on November 25, 2015.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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).

Claimant was responsible for helping families establish a safe environment for their children. Claimant transported a two-month old baby without a car seat in the front seat of her car. Claimant's actions were in deliberate disregard of employer's interest in keeping the child safe. There is no excuse that could possibly justify claimant's behavior. A baby's life is more valuable than claimant's groceries. Claimant's actions violated the standards of behavior that any employer has a right to expect from its employees.

DECISION:

The December 15, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Christine A. Louis
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Decision Dated and Mailed

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