

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ANGEL F KULPER**  
Claimant

**EDGEWOOD COLESBURG COMM SCH  
DIST**  
Employer

**APPEAL 21A-UI-12257-AR-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/28/21  
Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

On May 10, 2021 claimant, Angel F. Kulper, filed an appeal from the April 30, 2021, reference 01, unemployment insurance decision that denied benefits based upon the determination that claimant quit her employment with the employer, Edgewood Colesburg Community School District, without showing good cause for having done so. The parties were properly notified about the hearing held by telephone on July 22, 2021. The claimant participated with her attorney, Katherine Schoolen, and claimant's witness Kevin McDermott. The employer participated through its hearing representative and witness, Superintendent Rob Busch, with employer's witness Melissa Conner, who did not testify. Claimant's Exhibits A through D were admitted to the hearing record.

**ISSUE:**

Did the claimant quit employment without good cause attributable to the employer, or did the employer discharge claimant for job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a paraeducator beginning on September 17, 2012, and was separated from employment on March 26, 2021, when she resigned in lieu of termination.

During the final year of claimant's employment, she was spoken to repeatedly about various performance concerns the employer had. Each time, claimant voiced her concerns about these reprimands to the employer. In September 2020, claimant received two formal written warnings—one was for insubordinate behavior, and the other was in response to parent complaints about claimant that the employer had received. Claimant felt that her interactions with students were being misinterpreted by some, and she felt she could not perform to the employer's satisfaction, despite her efforts to do so. She had been warned during each reprimand or warning meeting that her employment could be in jeopardy if her performance did not improve.

On March 25, 2021, Busch notified claimant that the employer had received another complaint about claimant. He scheduled a meeting with her for March 26, 2021. Claimant attended the March 26, 2021, meeting with McDermott, her union representative. At the meeting, Busch allowed claimant to respond to the latest complaint, but then told her he would have to think about what path he wanted to take at the end of the meeting. Approximately an hour after the meeting ended, Busch called claimant and informed her that the employer would be moving forward with termination. Claimant contacted McDermott, who, in turn, contacted Busch. McDermott and Busch agreed that claimant would be allowed to resign in lieu of termination if she so chose. Claimant submitted her resignation letter the same day.

### **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 Admin. Code r. 871—24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

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).

Since claimant would not have been allowed to continue working had she not resigned, the separation was a discharge, the burden of proof falls to the employer, and the issue of misconduct is examined.

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). 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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Id.* 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).

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. While claimant had been warned regarding her interactions with students in the past, the employer did not establish that these past incidents were substantially similar to the incident that precipitated the discharge decision. Additionally, the most recent formal warning that claimant received regarding her interactions with students was in September 2020, which was remote in time from her discharge. Finally, claimant credibly testified that she tried to do her job to the employer's standards, and felt she was misunderstood by people with whom she interacted on frequent occasions. Without evidence that claimant intentionally disregarded the employer's expectations, the employer has not met the burden of proof to establish that claimant engaged in misconduct. Benefits are allowed.

**DECISION:**

The April 30, 2021, (reference 01) decision is reversed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits withheld on this basis shall be paid to claimant.



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Alexis D. Rowe  
Administrative Law Judge

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July 29, 2021  
Decision Dated and Mailed

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