

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEPHANIE K PRIESTER
Claimant

ABCM CORPORATION
Employer

APPEAL 18A-UI-05705-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/15/18
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 9, 2018, (reference 01) unemployment insurance decision that denied benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on June 11, 2018. Claimant participated. Employer did not register for the hearing and did not participate. Claimant's Exhibit A was received.

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 began working for employer on September 20, 2017. Claimant last worked as a full-time CNA. Claimant was separated from employment on April 17, 2018, when she was terminated.

Employer is an assisted living facility. During her employment, claimant witnessed another employee steal food from the facility on three occasions. Each time, claimant reported what she saw to her supervisor, the assisted living manager. The employee remained employed and the incidents continued to happen.

On April 4, 2018, claimant came into work and the mixer was not in the kitchen. After asking around, claimant found out the employee who she believed had been stealing food had the mixer at her home. Even though the employee returned the mixer, claimant did not believe the conduct should continue as she believed stealing food from the facility amounted to dependent adult abuse. Claimant informed the administrator of what was going on and that if employer did not act to prevent further theft, she was going to report the issue to the State of Iowa. The administrator visited the facility the next day.

On April 5, 2018, claimant met with the administrator and the assisted living manager to discuss the issue. The administrator became angry during the conversation, and claimant tried to leave several times. The administrator blocked claimant from leaving the conversation by standing in

front of her. The administrator stated she was going to take an inventory of the food and require employees to check out food on a log in order to address the issue. The administrator stated she would return to take the inventory on April 9, 2018. The administrator did not come on April 9, 2018, to take the inventory and did not inform claimant she was not coming.

On April 11, 2018, a mandatory staff meeting was held. The administrator was present and asked claimant if she could meet with her after the meeting. The claimant was not scheduled to work longer than the meeting and stated she could not meet as she needed to transport her mother to a medical appointment.

On April 17, 2018, an employee from corporate headquarters, Morgan Prestholdt, came to the workplace and gave claimant a written reprimand for failing to meet with the administrator on April 11, 2018. Claimant stated she thought it was "shitty" she was being disciplined as the administrator failed to appear to take inventory without notifying her. In response, Prestholdt told claimant she was going to terminate her employment. Claimant stated she believed that was unfair as she felt the administrator harassed her during the April 5, 2018, meeting. Prestholdt asked claimant to write a statement on what conduct she believed consisted of harassment during her break. Claimant did so, and attempted to return the written statement to Prestholdt. Prestholdt refused to accept it and instead handed claimant a document stating, "Obviously this isn't working out for anyone of us. You are hereby terminated as of 4/17/18 at 1232."

Claimant had not received any other disciplinary action for similar conduct.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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).

In this case, claimant was reprimanded for failing to attend a meeting with supervisory staff members. It was not unreasonable for claimant to decline meeting after her scheduled shift on April 11, 2018, when she was given no advance notice of the meeting and she already scheduled a medical appointment for her mother. Although claimant's comment that the reprimand was "shitty" was unprofessional, it was an offhand remark and an isolated incident. Claimant had never been disciplined previously for engaging in such conduct. Ultimately, employer terminated claimant due to a personality conflict between the administrator and claimant and not job-related misconduct.

DECISION:

The May 9, 2018, (reference 01) unemployment insurance decision is reversed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

cal/scn