

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

**NICHOLE J BARTLETT**  
Claimant

**APPEAL NO. 18A-UI-08091-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CROSSROADS OF WESTERN IOWA**  
Employer

**OC: 06/24/18**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Crossroads of Western Iowa (employer) appealed a representative's July 18, 2018, decision (reference 01) that concluded Nichole Bartlett (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 17, 2018. The claimant participated personally. The employer participated by Therese Chevance, Director of Acquisition and Engagement. Exhibit D-1 was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 3, 2018, as a full-time residential coach. At the time she was hired the claimant disclosed she had a hip injury from the military and was under a weight restriction. On June 4, 2018, the claimant received another weight restriction from her physician.

On June 6, 2018, the claimant was suspended with pay pending investigation. On June 11, 2018, the claimant provided the new weight restriction to the employer. The employer told the claimant she could not return to work until she could lift fifty pounds. From June 23 to July 8, 2018, the employer complied with the claimant's request for time off for military duty.

The investigation was complete on June 28, 2018. The employer found no wrong doing but never returned the claimant to work because of the weight restriction.

The claimant filed for unemployment insurance benefits with an effective date of June 24, 2018. The employer participated personally at the fact finding interview on July 17, 2018, by Therese Chevance.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 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 disqualification shall continue 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(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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 employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The employer was not able to provide any evidence of a final incident of misconduct. It did not have any information that would have caused it to terminate the claimant. The

employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the suspension/discharge. The claimant was suspended/discharged but there was no misconduct.

**DECISION:**

The representative's July 18, 2018, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs