

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JUDY L SCOTT**  
Claimant

**APPEAL NO. 12A-UI-02564-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ASPEN CONTRACTING INC**  
Employer

**OC: 01/15/12  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Judy Scott (claimant) appealed a representative's March 5, 2012 decision (reference 03) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Aspen Contracting (employer) for failure to follow instructions in the performance of her job. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 30, 2012. The claimant participated personally and through James Sullivan, a former coworker. The employer participated by Ramona May, Director of Human Resources; Patrick Nussbeck, President; and Lauren Cook, Office Manager.

**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 May 9, 2011, as a full-time office manager. The claimant signed for receipt of the employer's handbook on January 9, 2012. She was to provide the president with an accounts receivable spreadsheet every Monday, Wednesday and Friday along with other duties.

In November 2011, the employer recognized there was a problem with certain sales representatives in the claimant's office. The employer instructed the claimant she was not to have any contact with those sales representatives. She was not to collect on their accounts or call their homeowners. Any collection of information was to be done through the manager, Michael Dolan. The claimant could not provide the spreadsheets to the President until Mr. Dolan provided the information regarding those sales representatives to her. Mr. Dolan was helpful to the workers in the office who were his friends. He was not as helpful to others. The claimant was not part of Mr. Dolan's inner circle.

The employer sent the claimant e-mails on December 13, 15, 19, 2011, telling her to perform specific duties. The employer notified the claimant that if she did not do the tasks someone else

would be found to perform the tasks. The employer never told the claimant she would be terminated if she failed to perform the tasks.

In December 19, 2011, the president flew to the claimant's location for a meeting. He told her that she needed to collect the accounts receivable balance of \$1,000,000.00, update the accounts receivable sheets daily, meet with the representatives daily, and get along with managers in the office. The president told the claimant that if she did not perform those duties, he would find someone else to perform the work. The claimant told the employer she would work to the best of her ability.

In January 2012, the claimant learned that she was to collect ten percent of the accounts receivable balance every day. She was unable to perform all her job duties and collect the required accounts receivable amount. On January 9, 2012, the employer terminated the claimant for failure to perform all her job duties to the employer's satisfaction.

### **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:

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.

871 IAC 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.

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). Misconduct connotes volition. A failure in job performance which results from inability or incapacity is not volitional and therefore not misconduct. Huntoon v. Iowa Department of Job Services, 275 N.W.2d 445 (Iowa 1979). 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). The employer discharged the claimant for poor work performance and has the burden of proof to show evidence of intent. The employer did not provide any evidence of intent at the hearing. The claimant's poor work performance was a result of being assigned too many job duties for her to possibly perform and failure of the employer to accurately communicate its expectations and consequences for failure to perform. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's March 5, 2012 decision (reference 03) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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