

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KALEENA NOWAK**  
Claimant

**APPEAL 21A-UI-17428-LJ-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**ST FRANCIS OF ASSISI SCHOOL WDSM**  
Employer

**OC: 04/11/21**  
**Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge from Employment

**STATEMENT OF THE CASE:**

On August 8, 2021, employer St. Francis of Assisi School – West Des Moines filed an appeal from the July 28, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a determination that claimant was discharged and the employer failed to establish the discharge was for willful or deliberate misconduct. The parties were properly notified of the hearing. A telephonic hearing was held at 11:00 a.m. on Monday, October 18, 2021. The claimant, Kaleena Nowak, participated. The employer, St. Francis of Assisi School – West Des Moines, participated through witnesses Principal Jon Aldrich, Heather Gunson, Former Kids Care Director; Paula Courter, Director of Operations; and Monica Lihs, HR Coordinator; and was represented by hearing representative Paul Jahnke. Claimant's Exhibit A and B were received and admitted into the record without objection. Claimant's Exhibit C was excluded from the record. The administrative law judge took official notice of the administrative record.

Exclude Claimant Exhibit C

**ISSUE:**

Was the claimant discharged from employment for disqualifying, job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began employment with St. Francis of Assisi School – West Des Moines on August 19, 2019. Claimant worked for the employer as a ten-month-per-year early childhood extension employee working full-time hours. Claimant's employment ended on April 12, 2021, when she was discharged.

On April 2, 2021, claimant and her colleague, Megan McPherson, had a conflict at work. Earlier in the day, claimant called McPherson for assistance and McPherson did not assist her. (Claimant's Exhibit B) McPherson then came to claimant's classroom to confront claimant about the incident, as McPherson felt claimant was frustrated with her. When claimant tried to respond to her, McPherson interrupted her and talked over her. Claimant replied that she was not going to fight with McPherson, and she went back to the classroom to tend to her students.

On April 6, Gunson brought the April 2 incident to Principal Aldrich's attention. That same day, Principal Aldrich interviewed McPherson to get her side of the story. After reviewing McPherson's interview and claimant's email documentation of the incident, the employer determined that claimant was at fault and decided to discharge her from employment. The employer described claimant's conduct on April 2 as indicative of "a continuous and habitual pattern of disrespect."

Both claimant and McPherson had been part of conversations at work regarding appropriate workplace behavior. On March 25, 2021, Gunson met with claimant and McPherson in hopes of improving the work environment and the colleagues' communication with and respect for one another. No disciplinary action was issued during this meeting. Claimant was not told that her job was in any jeopardy. Claimant had been disciplined on one prior occasion, back in February 2020, for an issue unrelated to the way she treated colleagues or superiors.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$2,585.00, since filing a claim with an effective date of April 11, 2021, for the eight weeks ending June 5, 2021. The administrative record also establishes that claimant has received Federal Pandemic Unemployment Compensation ("FPUC") benefits in the amount of \$2,400.00 for that same eight-week period. The administrative record also establishes that the employer did participate in the fact-finding interview, make a first-hand witness available for rebuttal, or provide written documentation that, without rebuttal, would have resulted in disqualification. Lihs returned the completed fact-finding questionnaire to Iowa Workforce Development on September 24, 2021.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all, provided the discharge is not contrary to public policy. However, if the employer fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation.

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). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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).

In this case, the final incident leading to claimant's discharge involved McPherson approaching claimant to try and discuss a conflict while claimant was working. Claimant told her that she did not want to engage in an argument, and she went back to teaching her students. Claimant did not behave inappropriately or disrespectfully toward McPherson during that interaction, and McPherson did not inform claimant there would be any consequences to her decision to turn her attention to teaching instead of arguing. Furthermore, claimant had not previously been warned about this issue and was not aware her job was in jeopardy. The employer has failed to establish that claimant was discharged from employment for any disqualifying reason. Benefits are allowed.

As claimant's separation is not disqualifying, the issues of overpayment, repayment, and chargeability are moot.

#### **DECISION:**

The July 28, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The issues of overpayment, repayment, and chargeability are moot.



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Elizabeth A. Johnson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

October 27, 2021  
Decision Dated and Mailed

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