

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**KIARRA V MOORE**  
Claimant

**EXPRESS LANE INC**  
Employer

**APPEAL 21A-UI-10976-JD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/14/21  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

On April 8, 2021, the claimant filed an appeal from the March 30, 2021, (reference 01) unemployment insurance decision that denied benefits based on an IWD representative's decision that the claimant voluntarily quit her employment without good cause attributable to her employer. The parties were properly notified about the hearing. A telephone hearing was held on July 6, 2021. Claimant Kiarra Moore participated personally along with witness, Virginia Fullmerer. Employer participated through representative Sue Dravis. Official notice was taken of the administrative record.

**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 working for employer on October 4, 2017. Claimant last worked as a full-time cashier. Claimant was separated from employment on March 26, 2021, when she became upset after she discovered that some paperwork that was prepared by her employer and was supposed to be provided to her child care provider had not been delivered. The employer acknowledged this error but when the employer attempted to fax the information to the child care provider to remedy this mistake the claimant was angry and would not provide that information. Further, the claimant became visibly upset inside the store where she worked after discovering this mistake and she knocked down a potato chip display, was talking in a raised voice, and engaged in unproductive and harassing words with the other employees in the store. There were no customers in the store at this time and the claimant acknowledged the inappropriateness of her behavior and apologized after the incident. The employer terminated the claimant after this incident. The employer contacted the Davenport Police Department to issue a no trespassing warning to the claimant following the discharge due to the claimant's aggressive behavior. Earlier on March 26, 2021, management held a staff meeting for all employees regarding various problems that were plaguing the store during this period of time. The claimant and her witness testified that this meeting was unproductive and they did not feel that their concerns regarding their working

environment were being acknowledged nor did they feel respected. The claimant testified that the staff meeting contributed to her outburst regarding the paperwork.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from her employer for disqualifying 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

Misconduct "must be substantial" to justify the denial of unemployment benefits. *Lee*, 616 N.W.2d at 665 (citation omitted). "Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." *Id.* (citation omitted). ...the definition of misconduct requires more than a "disregard" it requires a "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." Iowa Admin. Code r. 871-24.32(1)(a) (emphasis added).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosperv 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).

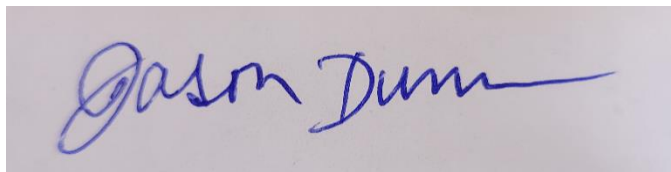
Misconduct must be “substantial” to warrant a denial of job insurance benefits. *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. Iowa Dep’t Human Servs.*, 461 N.W.2d 603, 607 (Iowa Ct. App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14(1). In making the evaluation, the fact-finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608.

The fact finder finds that both parties were credible and the information provided was mostly consistent. The issue in this case is that the events of that day do not justify the claimant’s aggressive and totally improper destruction of employer’s property. The claimant acknowledged that she destroyed the potato chip display at the store where she worked and was apologetic afterwards. That kind of physical aggression even if it is focused at some cardboard and potato chips is intended to scare people, is intimidating, and ultimately harassing to everyone that was present. Manifesting any type of violence especially where you work and in front of other people is not acceptable. This type of conduct is intentional and evinces a wanton and complete disregard for others. The employer was justified in calling the Davenport Police Department and issuing a no trespass order on the claimant following this incident. In arriving at this decision the administrative law judge only took into account the behavior that the claimant admitted to during the hearing and was further corroborated by the claimant’s witness. The claimant’s physical destruction of a merchandise display is disqualifying misconduct. Benefits are denied.

**DECISION:**

The March 30, 2021, (reference 01) that denied unemployment insurance benefits is affirmed. The claimant was discharged for job related misconduct. Benefits are withheld until such the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount.



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Jason Dunn  
Administrative Law Judge  
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July 16, 2021  
Decision Dated and Mailed

jd/scn