

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ALISA CHRISTOFFEL**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL 17A-UI-04541-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/02/17**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the April 21, 2017, (reference 01) unemployment insurance decision that denied benefits based upon a discharge for misconduct. The parties were properly notified about the hearing. A telephone hearing was held on June 9, 2017. Claimant participated personally and through attorney Richard A. Pundt. Employer participated through human resource manager Connie Heideman, store director Greg Wery, and store director Dave Blum and was represented by James Tranfaglia with Corporate Cost Control. Employer's Exhibit A and B were received. Claimant's Exhibits 2 through 12 were 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 February 22, 2016. Claimant last worked as a full-time registered dietician. Claimant was separated from employment on April 6, 2017, when she was terminated.

Employer has a policy addressing job performance and attitude. It states, "If your attitude and work performance goes down you will be talked to and get a consultation form. We need you at your best for the customers. If it does not improve it will result in disciplinary action up to and including termination." Claimant was aware of the policy.

Claimant and store director Greg Wery have a personality conflict. Wery is an outgoing, confident person. Wery expects the dietician working at his store to be extroverted and a self-starter. Claimant is introverted and is not as outwardly confident as Wery hoped she would be when he hired her.

By March 2017, Wery had several concerns with claimant's job performance. On March 13, 2017, store director Greg Wery went to claimant's office to speak with her. Wery stood at claimant's doorway and addressed her. Claimant kept working and did not immediately

acknowledge Wery. Wery expects to be immediately acknowledged. Wery then called claimant to his office for a meeting with human resource manager Connie Heideman. Wery discussed concerns he had with claimant's work performance and attitude. Wery did not give claimant a written warning or tell her that her job was in jeopardy. Claimant cried throughout the meeting. Heideman took detailed notes.

After the meeting, Heideman met with claimant and acknowledged the meeting was "rough." Heideman gave claimant tips on improving her performance.

In subsequent department head meetings, claimant did not participate and looked down during the meetings.

On April 6, 2017, employer held a weekly department head meeting. Wery said good morning to the group. Everyone else in the room acknowledged Wery. Claimant looked down and did not acknowledge Wery. Wery repeated his greeting. Claimant again looked down and did not acknowledge Wery. Claimant did not participate in the meeting. At the end of the meeting, Wery called claimant to his office and terminated her employment.

### **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:

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).

Claimant was terminated because she failed to acknowledge Wery during a group greeting at the beginning of a meeting, and was very quiet during that meeting and several previous meetings. Claimant is a quiet person who is not comfortable speaking in group settings. She had recently participated in a meeting with Wery that was very upsetting to her. While Wery may not have liked claimant's conduct, nothing indicates she was acting with any intent to injure employer or in violation of a previous warning. While employer may have previously asked claimant to improve her attitude, it never warned her that she would be terminated if she failed to do so. Although Wery and Heideman both testified claimant was warned during the March 13, 2017, meeting that she could be terminated if her attitude did not improve, I do not find this testimony credible. There is no mention of such warning in the detailed notes Heideman took of the meeting. Furthermore, the store policy requires a "consultation form" be issued before an employee can be terminated for poor attitude. Claimant was never issued such a form. At most, claimant's conduct was a good faith error in judgment without having been previously warned.

Employer has failed to establish she was terminated for misconduct.

**DECISION:**

The April 21, 2017, (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.

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Christine A. Louis  
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Decision Dated and Mailed

cal/scn