

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KIM S PORTER**

Claimant

**APPEAL NO. 06A-UI-09009-H2**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WALNUT STREET GALLERY**

Employer

**OC: 08-13-06 R: 02  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 7, 2006, reference 01, decision that allowed benefits. After due notice was issued, an in person hearing was held on October 9, 2006 at Des Moines, Iowa. The claimant did participate. The employer did participate through Drue Wolfe, Owner. Employer's Exhibits One and Two were entered and received into the record. Claimant's Exhibit A was entered and received into the record.

**ISSUE:**

Was the claimant discharged for work related misconduct?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a sales associate part time beginning October 19, 2004 through August 15, 2006, when she was discharged. Mr. Wolfe went out of town on August 4, 2006 and left a list of duties for the claimant to accomplish. Mr. Wolfe never told the claimant that if she failed to complete the list of assigned tasks, she would be discharged. The claimant completed most of the tasks but did not complete the entire list. She performed the job and it's duties to the best of her ability and had no previous warnings for any disciplinary matters. The claimant had no idea that her job was in jeopardy. She had previously asked her employer for her paycheck early on several occasions and had asked the employer to change the pay schedule, which he declined to do.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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). The employer discharged the claimant and has the burden of proof to show misconduct. Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). 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 claimant was discharged because she failed to complete an assigned list of tasks. However, she had no warning that the employer was no longer going to tolerate her performance and conduct, that is, her failure to complete tasks. Without fair warning, the claimant had no way of knowing that there were changes she needed to make in order to preserve her employment. The employer's evidence does not establish that the claimant deliberately and intentionally acted in a manner she knew to be contrary to the employer's interests or standards. There was no wanton or willful disregard of the employer's standards. In short, substantial misconduct has not been established by the evidence. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The September 7, 2006, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/kjw