

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHERRI L SKOU
Claimant

WELLS ENTERPRISES INC
Employer

APPEAL 15A-UI-08213-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/21/15
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 16, 2015, (reference 01) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A telephone hearing was held on August 12, 2015. Claimant participated personally and through witness Randi Mackey. Employer participated through hearing representative Michelle Hawkins, associate human resource business partner, Stormie Westpal, and plant controller, Brandon Schaecher. Employer's Exhibit 1 was 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 was employed full time as an administrative assistant for the finance department from August 26, 2002, and was separated from employment on June 19, 2015, when she was terminated.

In 2014, there were three employees performing payroll duties for employer's south plant. One of the positions was eliminated. The job duties were divided up and given to the two remaining employees, one of which was claimant. Also in December 2014, claimant was given additional job duties completing paperwork for employer's production lines. Performance issues were noted in claimant's annual performance evaluation in 2014.

In January 2015, employer began hiring approximately 15 to 30 individuals per week. As part of her payroll duties, claimant was required to manually switch the new employees' training hours from regular hours to training hours in the payroll system. Thus, employer's hiring boom further increased claimant's job duties.

Employer put claimant on a performance improvement plan on February 27, 2015. Claimant was warned that if her performance did not improve she would be terminated. Claimant tried to improve her performance. She asked her friends to pray for her to improve her focus at work.

After putting claimant on a performance improvement plan, employer began auditing claimant's performance in payroll duties. A number of issues were noted. For example, at times claimant allocated hours for training time incorrectly. When employees were transferred to different production lines, claimant occasionally failed to allocate the time to the correct production line. The lead administrative assistant discussed these issues with claimant as they were discovered.

Claimant was responsible for sending the exception report to supervisors daily. The exception report alerts supervisors to anything out of the ordinary regarding their subordinate employees' time records. The report is sent out so supervisors can take necessary action, such as changing the time records, approving tardies or absences, or determining whether employees need to be given occurrences under employer's attendance policy.

On Tuesday, June 16, 2015, claimant sent out the exception report late in the day. Generally, the report should be sent out before noon as employer has some supervisors whose shifts end in mid-afternoon. Additionally, the exception report had not been "cleaned up." In other words, there were many entries on the report claimant could have resolved herself and removed before sending out the report. This resulted in supervisors reviewing much more information than necessary.

Schaecher felt claimant was no longer able to perform her job duties to meet the employer's expectations.

Claimant had been on the performance improvement plan since February. However, her performance was not improving. Thus, on June 19, 2015, Schaecher and associate human resource business partner Stormie Westpal terminated claimant's 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). Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Here, the evidence shows that with the additional duties required by employer, claimant was no longer able to adequately perform her job. Claimant made her best effort to adequately perform in her position, and was not intentionally careless or wanton in performing her job duties.

DECISION:

The July 16, 2015, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Christine A. Louis
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Decision Dated and Mailed

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