

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

LISA A BENISCH
Claimant

APPEAL NO: 19A-UI-05949-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ART PAPE TRANSFER INC
Employer

OC: 06/30/19
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 18, 2019, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 19, 2019. The claimant participated in the hearing. Sauny Tucker, CEO, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time driver manager in van operations division for Art Pape Transfer from April 1, 2019 to June 28, 2019. She was discharged because she did not have the ability to perform the job to the employer's expectations.

On May 28, 2019, the employer issued the claimant a performance improvement plan (PIP) listing seven areas of improvement needed. Those areas included increasing her level of "knowledge of TMW Suite software system; demonstrate the ability to take independent initiative without close supervision and directions; demonstrate a willingness and attitude that conveys a willingness to go above and beyond the status quo to delight both internal and external customers; exhibit a positive, can-do attitude. Less defensiveness; actively participate in problem solving with our team, including necessary follow-up action items. Work on bringing solutions to the floor instead of just reporting problems; support the operation department and other office staff by pitching in to help out even if the task is not in your regular job description. Demonstrate flexibility in an independent manner without close supervision and instruction; and Understand who to report to and/or ask for assistance in satisfying the above objectives when and if necessary" (Employer's Exhibit One).

The employer felt the claimant did not show any improvement in any of the seven areas listed above and consequently it terminated her employment 30 days later on June 28, 2019

(Employer's Exhibit Two). The employer stated its belief that the claimant lacked the ability to do the job. The claimant asked for assistance but was told she had to "sink or swim."

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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

While the employer may discharge an employee who is not performing her job to its expectations, the inability to meet expectations does not constitute intentional, disqualifying job misconduct. The employer testified to her belief that the claimant lacked the ability to perform the job. If an employee is incapable of meeting the employer's expectations her failure to do so is not considered misconduct.

Under these circumstances, the administrative law judge must conclude the employer has not met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The July 18, 2019, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn