

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BRIANNA VARNER**  
Claimant

**CLYSAR LLC**  
Employer

**APPEAL 20A-UI-15502-JC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/16/20**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant/appellant, Brianna Varner, filed an appeal from the November 17, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 17, 2021. The claimant participated personally, and represented by John F. Doak, attorney at law. The employer, Clysar LLC., participated through Sylvia Gomez, human resources director. Kathy Truelson also testified. Andrea Weller attended as an observer.

The administrative law judge took official notice of the administrative records. Claimant Exhibits 1-11 and Employer Exhibits A and B were admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**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: The claimant began employment in 2018 and most recently worked as a full-time administrative specialist until she was discharged on August 20, 2020.

Claimant was issued a handbook at the time of hire (Employer Exhibit B). Employer updated the handbook repeatedly during claimant’s employment. Claimant denied receipt of the new handbooks/work rules. Employer stated it discharged claimant for violating its code of conduct regarding unsatisfactory performance and insubordination or deliberate refusal to comply with reasonable requests or instructions (Employer Exhibit A).

Claimant worked on August 5, 2020. She was absent August 6-19, 2020 using EFMLA and vacation time. Claimant returned to work on August 20, 2020 and was presented with a performance improvement plan (PIP) by Ms. Truelson and Ms. Gomez (Claimant Exhibit 11). Claimant was surprised by the PIP, based upon positive feedback leading up to her leave of

absence. The meeting regarding the PIP last an hour. During the hearing, Ms. Gomez made four different references to the claimant's conduct in the meeting (citing to her benign argumentative, combative, deleting documents during it, and calling Ms. Truelson a liar) but stated she was not discharged for her conduct in the meeting, but rather, her refusal to sign the PIP before leaving the room.

The PIP stated claimant would be put on a 30-day corrective action plan as a result of the plan (Claimant Exhibit 11). The PIP also stated "if there are aspects of your job responsibilities or my expectations of your performance that you still do not understand, please ask for my guidance and direct on these issues immediately" (Claimant Exhibit 11). During the conversation, claimant asked for specific examples of conduct, based upon the documentation presented to her. She was told by Ms. Gomez that she (claimant) was neither the boss nor company attorney, and answers didn't need to be given to her.

The PIP provided no room for employee comments before a signature. However, it did contain the following language: "I take full responsibility for improving and sustaining my performance. My signature indicates that I have discussed this with my manager and understand the expectations" (Claimant Exhibit 11). Then there was a line for the claimant to sign.

Employer directed claimant to sign the PIP before leaving the room. Claimant requested time to review the document before signing it. She did not outright refuse to sign it, but stated she recognized that by signing it, she was more than just acknowledging the receipt of the document being presented to her, regardless of whether she agreed with its contents or not. Initially when claimant requested time to review the document, Ms. Truelson agreed. However, Ms. Gomez overrode the request, stating the company president insisted the claimant sign it at the end of the meeting. Claimant did not sign the document and she was discharged.

#### **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 law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

"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).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. 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 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). 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).

Despite Ms. Gomez's repeated references to the claimant's conduct in the meeting on August 20, 2020, employer insisted claimant was not discharged for that reason. Rather, in this case, the employer discharged the claimant for not signing a performance improvement plan (PIP) at the time it was presented to her on August 20, 2020. The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

An employer has the right to communicate its expectations to employees, whether it be through formal discipline or feedback. The employer had the right to present its concerns to claimant on August 20, 2020, even if claimant was surprised or disagreed. The credible evidence presented is not the claimant refused to sign the document, but said she wanted time to review it before signing it. Claimant expressed concern about the issues raised in the PIP and had asked for specifics. This was consistent with language in the PIP itself which directed the claimant to ask for additional information if she had questions or it was unclear (Claimant Exhibit 11). However, when claimant did so, she was told that the employer didn't owe her specifics, as she was not the boss or company attorney.

Further, it cannot be ignored that the language above claimant's signature was not asking her to simply acknowledge the document being presented to her, but was requiring her to take responsibility and that she understood her manager's expectations. The claimant did not understand and reasonably wanted time to digest the information presented before signing. There was no evidence presented that the claimant requested an unreasonable amount of time or was presented a reasonable time to process the information contained, especially when the employer refused to provide specific examples upon request (even though the PIP specifically directed the claimant to ask questions.) The administrative law judge is persuaded that in light of verbiage within the PIP, that the claimant was not unreasonable in requesting *some* time to read, reflect and process the information before signing. Based on the evidence presented, the administrative law judge concludes the claimant has established a reasonable explanation for her non-compliance with the employers' directive to sign the document immediately.

The question before the administrative law judge in this case is not whether the employer has the right to discharge this employee, but whether the claimant's discharge is disqualifying under the provisions of the Iowa Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above stated reasons, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing that the claimant's discharge was due to job-related misconduct. Accordingly, benefits are allowed provided the claimant is otherwise eligible.

The parties are reminded that under Iowa Code § 96.6-4, a finding of fact or law, judgment, conclusion, or final order made in an unemployment insurance proceeding is binding only on the parties in this proceeding and is not binding in any other agency or judicial proceeding. This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise.

**DECISION:**

The unemployment insurance decision dated November 17, 2020, (reference 01) is reversed. The claimant was discharged, but not for disqualifying job-related misconduct. Benefits are allowed, provided she is otherwise eligible.



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Jennifer L. Beckman  
Administrative Law Judge  
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Iowa Workforce Development  
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February 10, 2021  
Decision Dated and Mailed

jlb/kmj

**NOTE TO EMPLOYER:**

If you wish to change the name/contact of record, please access your account at:  
<https://www.myiowaui.org/UITIPTaxWeb/>.