

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BEVERLY D COLE**

Claimant

**APPEAL NO. 08A-UI-08089-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NISHNA PRODUCTIONS INC**

Employer

**OC: 07/13/08 R: 01  
Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 2, 2008, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on September 24, 2008. Claimant participated. Employer participated through Marcee Bisbee and Wendy Davies.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time supported community living specialist from July 22, 2005 until June 25, 2008, when she was discharged. During a meeting on June 23 with a client, the client's parents, program manager Julie Cooper, and county employee case manager Denise Scholl, claimant reported the client had made great strides in the last year and she was afraid he would regress if a coworker (team leader Tracey Laufrey) was brought in to work with him because he does not like her. Scholl required that claimant specify Laufrey's name. She mentioned this concern to Scholl because she had always been instructed to speak on behalf of the clients. After the meeting, she spoke to Scholl about a professor and Laufrey overheard the tail end of the conversation and assumed it was about her. No one else was present. Employer did not interview or confront claimant before the discharge; and on June 24 when employer instructed her to report to the June 25 meeting, she was also told it looked like she was going to be fired.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment 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.

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 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." 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).

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, employer incurs potential liability for unemployment insurance benefits related to that separation. In the June 23 client meeting, claimant was appropriately acting in the best interest of the client when she expressed concern about the client regressing if Laufrey worked with him. She also was reasonable in providing Scholl with Laufrey's name. Since the conversation after the meeting had nothing to do with Laufrey, it is irrelevant to the reasons for the separation. Regardless of any prior unrelated warnings, employer has not met the burden of proof to establish that

claimant acted unreasonably or in violation of company policy, procedure, or prior warning. Had employer bothered to complete a full investigation including claimant, the separation might have been avoided. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Benefits are allowed.

**DECISION:**

The September 2, 2008, reference 01, decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw