

The claimant was employed as a CNA full time beginning March 11, 2004 through September 13, 2005 when she was discharged. The claimant was discharged for failing to turn in a self-improvement plan in what the employer believed to be a timely manner. The claimant was asked to complete some additional training in the form of two self studies and then to take a computer test about those two self studies and to turn in the test itself to her Supervisor, Sara Bruner. The claimant was to have the self-improvement plan completed and turned in to her supervisor by September 9, 2005. The claimant forgot the paperwork at home on September 9, and was given until Monday September 12 to turn in the completed paperwork. On September 12 the claimant was again approached by Ms. Bruner about turning in the paperwork and again the claimant said she had forgotten them at home because she had not been home and her sister had brought her into work. On September 13, the claimant and Ms. Bruner met with Ms. Meester to discuss why the claimant's failure to present the employer with completed paperwork. Prior to the meeting on September 13 the claimant told Ms. Bruner that she had forgotten the papers again but that she would walk home right after work, get the papers and bring them right back into her. Ms. Bruner told the claimant it was ok, and she could either bring the papers in that afternoon after work or bring them in the next day. Later in the day the claimant was asked to a meeting with Ms. Bruner and Ms. Meester where she was told that since she did not have the papers turned in by September 9, she was subject to discipline. This meeting was held despite Ms. Bruner's earlier acquiescence to the claimant bringing the papers in either after work on September 13 or the next day. The claimant clocked out at 11:30 a.m. walked home and returned with the completed paperwork at approximately 11:45 a.m. or 11:50 a.m. When the claimant returned at most twenty later, she turned in the paper work to Ms. Bruner and it was clear that the paperwork had been completed as required. The claimant had been given permission to turn the paperwork in late.

#### 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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).

If a party has the power to produce more explicit and direct evidence than it chooses to do it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). Sara Bruner did not testify at the hearing. The claimant has established that she was given permission to turn in the paperwork late. The claimant had completed the paperwork as required and had been given permission to turn them in late. The employer has not established that the claimant committed any misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The September 28, 2005, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/tjc