

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MICHAEL WILSON**  
Claimant

**GO DADDY SOFTWARE INC**  
Employer

**APPEAL 21A-UI-18309-CS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/16/21  
Claimant: Appellant (2)**

Iowa Code §96.5(2)a-Discharge/Misconduct  
Iowa Code §96.5(1)- Voluntary Quit

**STATEMENT OF THE CASE:**

On August 19, 2021, the claimant/appellant filed an appeal from the August 10, 2021, (reference 01) unemployment insurance decision that disallowed benefits based on claimant being discharged for failure to perform satisfactory work even though he was capable of doing satisfactory work. The parties were properly notified about the hearing. A telephone hearing was held on October 12, 2021. Claimant participated at the hearing. Employer participated through Employee Relations Partner, Kris Meyer and Associate Manager of Vendor Performance and Innovation. Administrative notice was taken of claimant's unemployment insurance benefits records

**ISSUE:**

Was the separation a discharge for job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on May 25, 2014. Claimant last worked as a full-time Care Support Guide 2. Claimant was separated from employment on May 18, 2021, when he was discharged.

Part of the employer's business is fielding inbound phone calls that generates sales for the employer. The employer has metrics that employees of the inbound calls department are expected to meet every month. If an employee does not meet the metrics every month then the first month that they do not meet the metric they are put on a Performance Improvement Plan (PIP). The employee is put on the PIP immediately following the month they failed to meet the metrics. The employer is expected to get off of the PIP in one month. The employer has a policy that if you are on a PIP and then you fail to meet the metrics for the month that you are on the PIP then you are terminated. Put another way, if an employee fails to meet their metrics two months in a row they are terminated. During the PIP an employee is given individualized coaching from their supervisor to help them identify behaviors that may help them improve their metrics.

In March 2021, the claimant did not meet his metrics for the company. The employer had a goal that claimant was supposed to have \$255.00 per day in sales and have 28 calls per day along

with other metric goals. For the month of March claimant had an average of \$201.87 in sales per day and had an average of 20.56 calls per day. The employer put claimant on a PIP during the month of April. Claimant did not meet the goals for April and was terminated for not meeting his metrics two months in a row.

The claimant met his metrics up until March 2021. The employer's metrics change each calendar quarter but the metrics for March 2021 were at one of the lowest metrics that the employer required of the employees.

The claimant was aware of the employer's policy regarding failing to meet two months of metrics would lead to termination. Additionally the claimant's March PIP notified him that if he did not improve he would be terminated.

The employer did not have evidence the claimant willfully and intentionally tried to underperform. The employer identified with the claimant some behaviors that he needed to change to increase the opportunity to meet his metrics. The employer did not think the claimant's behavior had changed. Claimant attributed his failure to meet the metrics due to call volume, working remotely and not being able to interact with his supervisors like he once did prior to working remotely.

#### **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 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 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).

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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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).

Claimant attempted to perform the job but was unable to meet the employer's expectations. No intentional misconduct has been established, as is the employer's burden of proof. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). I do not find that claimant's conduct or actions were intentional or were caused by claimant's carelessness which indicated a wrongful intent. 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 Bd.*, 616 N.W.2d 661 (Iowa 2000). For these reasons, I conclude the employer failed to meet its burden of proof in establishing disqualifying job misconduct. As such, benefits are allowed.

#### **DECISION:**

The August 10, 2021, (reference 01) unemployment insurance decision is REVERSED. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



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Carly Smith  
Administrative Law Judge

October 18, 2021  
Decision Dated and Mailed

cs/ol