

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JONI L ANDERSON**  
Claimant

**APPEAL NO. 15A-UI-06863-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MOSAIC**  
Employer

**OC: 05/17/15**  
**Claimant: Appellant (2)**

Section 96.5 2a - Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated June 11, 2015, reference 01, which denied unemployment insurance benefits finding that the claimant was discharged from work on May 18, 2015 for failure to follow job instructions. After due notice was provided, a telephone hearing was held on July 22, 2015, Claimant participated. Participating on behalf of the claimant was Mr. Scott Buchanan, Attorney at Law. The employer participated by Mr. Tom Kuiper, hearing representative, and witnesses: Ms. Doris Holmes, Human Resource Specialist and Ms. Kailee Russell, Direct Support Manager.

**ISSUE:**

An issue is whether the claimant was discharged for intentional misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all the evidence in the record, the administrative law judge finds: Joni Anderson began employment with Mosaic on April 1, 2012. Ms. Anderson was employed as a full-time direct support associate providing interaction and supervision to individuals with physical and mental disabilities. Ms. Anderson was paid by the hour. Her immediate supervisor was Kailee Russell, Direct Support Manager. The claimant was discharged on May 18, 2015.

The claimant was discharged on May 18, 2015, for an incident that had taken place on May 14, 2015. On that date, Ms. Anderson was working with six clients providing interaction in the form of a class on wild birds. Along with the six individuals that Ms. Anderson had been assigned to work with, Ms. Anderson was also assigned to interact with and monitor a male client.

Ms. Anderson was aware through information available to her that the male client had recently been authorized to use computer equipment only if the client was "supervised" as he did so.

On May 14, Ms. Anderson was using the male client as an assistant as she presented slides and bird calls via her personal iPhone.

Ms. Anderson had the male client play the sounds of birds for other clients as she showed pictures of the various birds. While doing so, Ms. Anderson observed the male client and listened as he played iPhone bird sounds for the group. The male client stayed within three feet of the claimant and appeared to be only performing authorized tasks.

Later, after retrieving the phone at the end of the day, Ms. Anderson discovered that the male client had accessed more than one pornographic website on the iPhone that day and had been viewing pictures of adolescent males. Ms. Anderson immediately reported the incident to management via telephone.

The employer reviewed the matter and concluded that because the resident's care plan had required "100 percent supervision while he operated computer equipment" that the claimant had not followed the care plan requirements and had allowed the claimant who is considered to be a "predator" to access pornographic websites on her personal phone and a decision was made to terminate Ms. Anderson from her employment based upon the single infraction. The claimant had not been previously warned or counseled about anything similar.

Although Ms. Anderson was generally aware of limitations that had been imposed on the male client using electronic equipment, she believed that the requirements had been relaxed and that the client's use of her iPhone while assisting her would not be a violation of the care plan. Ms. Anderson regularly observed the client as she conducted the instruction on birds and did not observe him acting suspiciously or accessing unauthorized websites as he assisted her. Based upon the claimant's statements to the employer when the matter was being investigated the employer believed that Ms. Anderson was knowledgeable about the strict limitations that had been imposed upon the client's use of electronic communication equipment.

#### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

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).

Since the claimant was discharged, the employer has the burden of proof in this matter. See Iowa Code Section 96.6(2). Misconduct must be substantial in order to justify the amount of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the amount of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

The issue is not whether the employer made a correct decision in separating the claimant, whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what constitutes a warrant of denial of unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant the denial of job insurance benefits. Such misconduct must be "substantial". When based upon 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. See Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa 1988).

In the case at hand the evidence establishes the claimant did not have access to all pertinent information regarding the level of monitoring required for the client in question when the client was using a computer or computer-related equipment. Based upon the information available to her, Ms. Anderson reasonably believed allowing the client to use her iPhone while she observed his actions, close at hand would be sufficient to supervise his use of the equipment. The claimant attempted to keep the client occupied and closely observed him as the assistant of Ms. Anderson while she performed other duties that were assigned to her at the time. The evidence in the record does not establish the claimant's conduct was recurrent or that she provided the iPhone to the client with a wrongful intent.

Based upon the evidence in the record the administrative law judge concludes that the claimant's conduct was an isolated instance of poor judgment, caused in part by limited information available to her about the level of monitoring required for the client in question.

While the employer's decision to terminate the Ms. Anderson from her position with Mosaic may have been a sound decision from a management view point, for the above-stated reasons, the administrative law judge concludes the claimant's conduct did not rise to the level of misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, providing, the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated June 11, 2015, reference 01, is reversed. Claimant was discharged under non-disqualifying conditions, unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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