

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DUSTY J STORK
Claimant

**CARROLL CO COUNCIL FOR THE
PREVENTION OF CHILD ABUSE**
Employer

**APPEAL 20A-UI-10859-HP-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/17/20
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant Dusty Stork filed an appeal from an August 28, 2020 (reference 01) unemployment insurance decision that denied benefits based upon her discharge from employment by Carroll County Council for the Prevention of Child Abuse (“Carroll County”). The parties were properly notified of the hearing. Stork appeared and testified. No one appeared on behalf of Carroll County. I took administrative notice of the claimant’s unemployment insurance benefits records maintained by Iowa Workforce Development.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?

FINDINGS OF FACT:

In April 2000, Stork commenced full-time employment as the waiver services manager for Carroll County. Stork’s mother was her immediate supervisor. Tim Nichols took over the position during Stork’s career.

Stork and Nichols did not get along well. Stork testified she felt intimidated by him.

A member of the community donated a scooter to Carroll County for use in the community. The scooter sat in a closet for several years. In August 2019, Stork’s father, Ron Mowery, had a need for the scooter. Stork asked Nichols if her father could use it and he said he could. Ron Mowery is not a participant in the waiver program. Stork’s sister, lives with her parents, and is a participant in the waiver program. Stork’s sister also used the scooter.

In February 2020, Nichols discovered the scooter was missing. He asked Stork if she knew where the scooter was and whether it was being used. She replied she knew where the scooter was and who was using it.

A while later Nichols again asked about the scooter. Stork told him it was being using by an individual named Tracy B. That was not true. Ron Mowery was using it. Nichols terminated

Stork's employment. Ron Mowery returned the scooter. Carroll County regularly receives donations. Stork testified Carroll County does not have a policy on how donations are used.

REASONING AND CONCLUSIONS OF LAW:

Under Iowa Code section 96.5(2)a,

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits: . . .

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 disqualification shall continue 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 Iowa Administrative Code 24.31(1)a, defines the term "misconduct" 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 Iowa Legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 558 (Iowa 1979).

871 Iowa Administrative Code 24.32(4) also provides,

Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

In addition, 871 Iowa Administrative Code 24.32(8) provides:

Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer bears the burden of proving the employee engaged in disqualifying misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6, 11 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262, 264 (Iowa Ct. App. 1984).

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, 808 (Iowa Ct. App. 1984). The definition of misconduct in the administrative rule focuses on deliberate, intentional, or culpable acts by the employee. *Id.* When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* at 808-09. Negligence does not constitute misconduct unless it is recurrent in nature; a single act is not disqualifying unless it is indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). Additionally, poor work performance is not misconduct in the absence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211, 213 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 666-69 (Iowa 2000) What constitutes misconduct justifying termination of an employee and what misconduct warrants a denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679, 680 (Iowa Ct. App. 1988). Instances of poor judgment are not misconduct. *Richers v. Iowa Dep't of Job Serv.*, 479 N.W.2d 308, 312 (Iowa 1991); *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 555 (Iowa Ct. App. 1986).

Stork was a long-term employee of Carroll County. I find she exercised poor judgment in failing to initially disclose her father was using the scooter. Stork reported she asked if her father could use the scooter in August 2019 and Nichols responded he could, but later he did not recall the conversation. The scooter was returned. No one appeared on behalf of Carroll County during the hearing to explain the employer's position or to rebut Stork's testimony. I do not find the employer has met its burden of proof Stork engaged in work-connected misconduct that should preclude her from receiving unemployment benefits. Benefits are granted.

DECISION:

The August 28, 2020 (reference 01) unemployment insurance decision denying unemployment insurance is reversed in favor of the claimant/appellant. Benefits are allowed provided the claimant is otherwise eligible.



Heather L. Palmer
Administrative Law Judge
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October 26, 2020
Decision Dated and Mailed

hlp/sam