

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LINDA K AUSTIN
Claimant

ATLANTIC BOTTLING CO
Employer

APPEAL 20A-UI-11486-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/26/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On September 18, 2020, the claimant filed an appeal from the September 15, 2020, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 10, 2020. Claimant participated. Employer participated through human resource business partner Anne Marie Johnson and branch general manager Ray Paullin. Employer's Exhibits 1 through 4 were admitted into the record.

ISSUE:

Was the claimant discharged for disqualifying 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 October 23, 2007. Claimant last worked as a full-time receptionist/office assistant. Claimant was separated from employment on July 23, 2020, when she was terminated.

Employer has a conduct guide that requires employees to conduct themselves in a business-like manner. The conduct guide requires employees to treat fellow employees with honesty and respect. Claimant was aware of the policy.

On July 22, 2020, claimant's general manager, Ray Paullin, talked to claimant about having a negative attitude and not getting along with her co-workers. Paullin also counseled claimant regarding instances where she was inserting herself into matters that did not involve her. Claimant was emotional during the meeting and Paullin sent her home early and paid her for the rest of the day. Claimant knew that two of her co-workers were reporting her behavior to Paullin.

On July 23, 2020, claimant was still angry about what happened the previous day. Claimant wrote a note that said, "Trust no one here." Claimant gave the note to a new employee. The new employee felt very uncomfortable with the situation and reported it to a manager.

Employer decided it could not tolerate any more disruption in the office and terminated claimant's employment.

On July 1, 2019, employer suspended claimant for three days for being rude and demanding toward her co-workers.

On May 7, 2019, employer gave claimant a verbal warning regarding the way she approached Paullin with a personnel matter.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 96.5(2)a provides:

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 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.

The employer has the burden to prove the claimant was discharged for job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer made the correct decision in ending claimant's employment, 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). Misconduct justifying termination of an employee and misconduct

warranting denial of unemployment insurance benefits are two different things. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence is not misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). 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).

In this case, employer terminated claimant for being rude and creating dissension in the workplace after having been warned on numerous occasions. Employer established it terminated claimant for misconduct.

DECISION:

The September 15, 2020, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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November 17, 2020
Decision Dated and Mailed

cal/scn

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.