

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**BETTE A LYMAN**  
Claimant

**VON MAUR INC**  
Employer

**APPEAL 15A-UI-09816-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/02/15**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from the August 20, 2015, (reference 01) unemployment insurance decision that allowed benefits based upon the determination that the employer failed to furnish sufficient information to show the claimant was discharged for misconduct. The parties were properly notified about the hearing. A telephone hearing was held on September 16, 2015. Claimant Bette Lyman participated on her own behalf. Employer Von Maur, Inc. participated through Human Resources Manager at Ecommerce Dawn Shaw and Ecommerce Operations Manager Brandi Weaver. Employer's Exhibits 1 through 3 were received.

**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: The claimant was employed for the second time as a full-time first-shift fulfillment associate beginning September 15, 2014, and was separated from employment on May 6, 2015, when she was terminated. The claimant was shopping with her daughter at a Von Maur store on May 1, 2015. She was still dealing with a death of someone close to her and was not in her "right mind." Her daughter was purchasing some make-up that was valued at \$15.00. The claimant told the clerk she had an associate discount, which was applied, and the claimant's daughter purchased the make-up. The transaction was discovered the same day by loss prevention in the store and Ecommerce Operations Manager Brandi Weaver was notified.

On May 6, 2015, Weaver contacted the claimant to ask about the incident. The claimant acknowledged the incident had happened and apologized profusely as she had not intended to violate the employer's policy. She explained she had made a mistake. The employer has policies related to the employee discount benefit. The policies state a violation, which would

include allowing an unauthorized person to use the discount, could result in termination of employment. Weaver decided as the claimant had violated the policy and admitted to the incident that she should be separated from employment. The claimant had not received any previous warnings for similar conduct.

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

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. 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." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

The claimant was careless and did violate the employer's policy. However, there has been no evidence provided to show that she had a wrongful intent when she engaged in the conduct. She acknowledged the conduct occurred and was not deceitful when confronted by Weaver. The conduct for which claimant was discharged was merely an isolated incident of poor judgment and, inasmuch, as the employer had not previously warned the claimant about the issue leading to the separation, it has not met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Benefits are allowed.

**DECISION:**

The August 20, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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