

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEVE WALLACE
Claimant

DUPACO COMMUNITY CREDIT UNION
Employer

APPEAL 20A-UI-09642-HP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/31/20
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Claimant Steve Wallace filed an appeal from an August 10, 2020 (reference 01) unemployment insurance decision that denied benefits based upon his discharge from employment from Dupaco Community Credit Union (“Dupaco”). Notices of hearing were mailed to the parties’ last known addresses of record for a telephone hearing scheduled for September 22, 2020. Wallace appeared and testified. Katie McClain appeared and testified on behalf of Dupaco. Exhibit 1 was admitted into the record. 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:

On April 30, 2018, Wallace commenced full-time employment with Dupaco. Wallace worked as a virtual lending consultant for the bank. He received a salary and commission if he met expectations. Cindy Hilkin was his immediate supervisor.

Wallace had performance problems during his employment. Dupaco did not believe the quantity or quality of his work was satisfactory.

On January 7, 2020, Wallace received a written warning and performance improvement plan. The document notified Wallace the quality and quantity of his work was an issue. Hilkin informed Wallace Dupaco expected him to process eight loans per day on average. McClain testified Wallace did not average eight loans per day from August through December 2019. Hilkin warned Wallace his job was in jeopardy.

On February 24, 2020, Hilkin provided Wallace with a final written warning. The notice informed him the quality and quantity of his work as an issue. McClain testified Wallace had been averaging 3.48 loans from August 2019 through February 2020. Hilkin notified Wallace his job was in

jeopardy and that he would be terminated if he was not processing eight loans per day on average. Wallace met with Hilkin weekly after February to discuss his progress.

In March 2020, Wallace processed an average of 6.86 loans per day. In April, he processed an average of 8.05 loans per day. McClain did not have Wallace's average for May 2020. Wallace testified he processed an average of 7.8 loans per day in May 2020.

Hilkin, McClain, and Hilkin's supervisor called Wallace on June 2, 2020. Hilkin told Wallace he was being terminated for the quantity and quality of his loans. McClain testified Wallace had an error rate of 23% in his loan applications and that he had not met his target of having 100% agreement with the underwriters for the loans. Wallace testified he made a good faith effort to improve.

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.

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)

Wallace was a poor employee and he was disciplined regarding the quantity and quality of his work on several occasions. Wallace's performance improved after he received the final warning, but he did not meet the goal processing eight loans per day. There was no evidence presented Wallace wasted time or that he was not working during the workday. The employer has not established he engaged in willful wrongdoing or repeated careless or negligence to establish willful misconduct. While Dupaco had the right to terminate Wallace, his conduct should not disqualify him from receiving unemployment benefits. As such, benefits are allowed, provided Wallace is otherwise eligible.

DECISION:

The August 10, 2020 (reference 01) unemployment insurance decision denying unemployment insurance benefits is reversed. The employer has not established the claimant was discharged for misconduct for a disqualifying reason. Benefits are allowed provided the claimant is otherwise eligible.

A handwritten signature in black ink, appearing to read 'H. Palmer', is written over a horizontal line.

Heather L. Palmer
Administrative Law Judge
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September 25, 2020
Decision Dated and Mailed

hlp/mh