

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**LAQUISHA CARTER**  
Claimant

**SHEARERS FOODS BURLINGTON LLC**  
Employer

**APPEAL 19A-UI-07734-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/15/19**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

On October 2, 2019, LaQuisha Carter (claimant) filed an appeal from the October 2, 2019, reference 01, unemployment insurance decision that denied benefits based upon the determination Shearers Foods Burlington, LLC (employer) discharged her for violation of a known company policy. The parties were properly notified about the hearing. A telephone hearing was held on October 23, 2019. The claimant participated personally. The employer responded to the hearing notice and registered a witness; however, she did not answer when called at the number provided. No exhibits were offered 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: The claimant was employed full-time as a Machine Tech Floater beginning on December 8, 2014, and was separated from employment on September 17, 2019, when she was discharged. The employer has a policy which states employees are not to leave the premises without permission.

The week of September 10, 2019, the claimant's child became ill. The claimant and the child's father worked opposite shifts; his shift ended at 7:00 a.m. and the claimant started work at 7:00 a.m. The claimant talked to her supervisor Rob Ramos to ask where she was going to be assigned to work that week. He told her that she would be assigned at the back of the building. She explained the situation and he approved her to clock in up front, give the child to the father, and then drive her car to the back lot.

On or about September 17, the employer became aware of the situation and reviewed the security camera. The employer discharged the claimant the same day for leaving the work premises without permission. The claimant explained she did have permission, but the employer still decided to terminate her employment. The claimant had not received any prior warnings related to a violation of the employer's off premises policy.

## REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 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 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.

Iowa Admin. Code r. 871-24.32 provides, in relevant part:

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.

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(4) 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.

This definition of misconduct 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 employer 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. The claimant's unrefuted testimony is that she had permission from her supervisor to leave the premises. Even if the claimant had violated the employer's policy, the conduct for which she was discharged was, at most, an isolated incident of poor judgment as the employer had not given her any prior warnings. 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. Accordingly, benefits are allowed.

**DECISION:**

The October 2, 2019, reference 01, unemployment insurance decision is reversed. 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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