

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**KELSIE L KNOWLER**  
Claimant

**APPEAL NO. 17A-UI-00505-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SINCLAIR & ASSOCIATES PC**  
Employer

**OC: 12/04/16**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Kelsie Knowler (claimant) appealed a representative's January 6, 2017, decision (reference 03) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Sinclair & Associates (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 8, 2017. The claimant participated personally. The employer participated by Jim Sinclair, Owner.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 1, 2016, as a full-time administrative assistant. The employer did not have a handbook. The employer does not mind if employees spend time on social media or personal interests so long as the work is completed. It did not issue her any written warnings during her employment. At the time of hire the claimant told the employer she had experience reconciling her own bank account. The claimant had never reconciled a business' bank account but had worked at a bank. The owner offered some training to the claimant at the beginning of her employment. The claimant did not understand the process of reconciliation of accounts. Later, it expected the claimant to train another employee. For the last weeks of employments the claimant was doing the work of two people in two different locations.

The owner met with the claimant from time to time in September, October, and November and notified her she was not paying bills on time. The claimant paid the amount of the bill the employer determined when the employer placed the bill in a tray. The claimant forgot to stop some services on a building that was sold because she was working two offices. The claimant told the owner the problem. He said he did not care.

On November 30, 2016, the owner saw his banker who told him he would not be getting the best interest rate because of late bill payments. On November 30, 2016, the employer placed bills in front of the claimant that were passed due and/or had interest and fees attached to the payment. The owner told the claimant she was fired.

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

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct connotes volition. A failure in job performance which results from inability or incapacity is not volitional and therefore not misconduct. *Huntoon v. Iowa Department of Job Services*, 275 N.W.2d 445 (Iowa 1979). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988). The employer discharged the claimant for poor work performance and has the burden of proof to show evidence of intent. The employer did not provide sufficient evidence of intent at the hearing. The claimant's work

performance was a result of her lack of training, untimely receipt of work, and a division of her time at two locations. The employer failed to provide any evidence of the date work was assigned, the date payments were due, or the date of the payments for any of the delinquent bills. Consequently the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the claimant's testimony to be more credible because she was an eye witnesses to the events for which she was terminated. The employer did not offer facts to support its case.

**DECISION:**

The representative's January 6, 2017, decision (reference 03) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs