

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**CANDISE K JOSEPH  
1106 E RUSHOLME ST  
DAVENPORT IA 52803**

**ALEXANDER JAMES FLOORING  
AND DECOR  
711 – 14<sup>TH</sup> ST  
BETTENDORF IA 52722**

**Appeal Number: 04A-UI-08895-S2T  
OC: 07/18/04 R: 04  
Claimant: Respondent (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Alexander James Flooring and Decor (employer) appealed a representative's August 12, 2004 decision (reference 01) that concluded Candise Joseph (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 9, 2004. The claimant participated personally and through Todd Liedtke, a friend of the claimant. The employer participated by Chad Henzen, President.

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 June 7, 2004 as a full-time bookkeeper. The employer gave the claimant approximately two hours of training. The claimant found that the computer software was not properly installed and setup. She asked a friend to help with the problems. The friend informed the president of the issues. The employer was unhappy with the claimant's performance but did not offer additional training or give the claimant warnings regarding her performance. On July 22, 2004, the employer terminated the claimant. The employer told the claimant she was being terminated because he did not want her putting more information into the computer.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons, the administrative law judge concludes she was not.

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). 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 any evidence of intent at the hearing. The claimant's poor work performance was a result of her lack of training and properly installed equipment. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's August 12, 2004 decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

bas/tjc