

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DIANA DEANDA**  
Claimant

**SIOUXLAND HUMAN INVESTMENT  
PRTSHP**  
Employer

**APPEAL 20A-UI-10740-HP-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/17/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(2) – Discharge Due to Misconduct

**STATEMENT OF THE CASE:**

Claimant Diana DeAnda filed an appeal from an August 27, 2020 (reference 01) unemployment insurance decision that denied benefits based upon her discharge from employment. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for October 20, 2020. Attorney Justin Vondrak represented DeAnda. DeAnda appeared and testified. Attorney Suzan Boden represented the employer, Siouxland Human Investment Partnership ("Siouxland"). Kelsey Keane, Abby Kempema, and Jenna Andrews appeared and testified on behalf of the employer. Matt Ohman appeared on behalf of Siouxland, but did not testify. Exhibits 1, 2, and A through C were 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 October 1, 2003, DeAnda commenced full-time employment with Siouxland. DeAnda was the director of elementary programming. In July 2019, Karissa Koser was promoted to co-director of elementary programming with DeAnda. Jenna Andrews was DeAnda's direct supervisor. The program DeAnda worked in receives federal funds.

In July 2018, DeAnda purchased gift cards as incentives for the staff at Siouxland. DeAnda requested permission from Siouxland administrative staff before purchasing the gift cards. She noted the gift cards would each be from \$25 to \$30. Ohman, the executive director, approved the request.

Siouxland has a corporate Sam's Club account. Siouxland earns rewards points on the account each year. Siouxland purchases items for its operations at Sam's Club, using federal funds it receives. The rewards are earned from purchases made at Sam's Club by Siouxland. The Sam's

Club card is not a credit card. The rewards are from Sam's Club, and do not revert to the federal government.

DeAnda testified in 2019 she purchased \$100 in gift cards for staff incentives using the rewards points on the Sam's Club account. DeAnda did not request permission from any Siouxland administrative staff member before she purchased the gift cards using the Sam's Club account rewards in 2019. The administrative staff and auditors did not notice the purchase in 2019.

On March 12, 2020, DeAnda's husband used rewards on the Siouxland Sam's Club account to purchase grocery items totaling \$124.95 for DeAnda's family. The grocery items were not purchased for Siouxland. DeAnda testified she did not know her husband used the Siouxland Sam's Club account rewards to make the purchase. DeAnda and her husband have a separate, personal Sam's Club account.

On April 18, 2020, DeAnda sent her husband to Sam's Club to purchase gift cards from Sam's Club using the Sam's Club card Siouxland had provided to DeAnda. DeAnda had her husband purchase \$295.44 in gift cards using the Siouxland Sam's Club account rewards. DeAnda's husband purchased three bundles of four \$25 gift cards for Chili's and one bundle of two \$25 gift cards for Sneaky Chicken. Koser knew about the purchase. DeAnda and Koser distributed the gift cards to the employees. DeAnda and Koser did not request permission from any member of management from Siouxland before DeAnda's husband purchased the gift cards using the Siouxland Sam's Club rewards points. DeAnda reported she sent her husband to the store because she had recently given birth to a baby and she did not want to risk becoming infected with Covid-19.

On May 7, 2020, Kempema, the director of finance and compliance for Siouxland, was monitoring the Sam's Club account while she was on the telephone with DeAnda and Koser. Kempema knew the account had \$500 in rewards. She noticed the \$500 in rewards was missing. Kempema testified she asked DeAnda and Koser if they had noticed the change in the balance of the rewards. Kempema testified DeAnda and Koser told her they had noticed the change in the balance of the rewards and they thought someone had taken Siouxland's Sam's Club card and had been using it. Kempema told DeAnda and Koser she was going to investigate with Sam's Club.

When Kempema contacted Sam's Club on May 7, 2020, she learned there were two purchases made with DeAnda's Siouxland Sam's Club card on March 12, 2020, in the amount of \$124.95 for groceries, and on April 18, 2020, for \$295.44 in gift cards.

Kempema called DeAnda and Koser back after speaking with Sam's Club. Kempema told them that Sam's Club told her the purchases had been made with DeAnda's Siouxland Sam's Club card. Kempema testified when she told DeAnda and Koser what she had learned DeAnda responded "oh my gosh, someone did steal from us." DeAnda denied making that statement. Kempema reported later during the conversation Kempema and Koser admitted they purchased the gift cards for staff using the rewards on the Sam's Club account. Kempema testified they asked whether she was going to tell Andrews. She replied that she was and DeAnda and Koser elected to let Andrews know first.

On May 7, 2020, DeAnda and Koser called Andrews, their immediate supervisor. Andrews stated Siouxland would investigate the incident. Siouxland placed DeAnda and Koser on administrative leave on May 11, 2020.

Andrews discussed the situation with Kempema, Keane, and Ohman. The Siouxland administrative staff determined both DeAnda and Koser should be terminated. Keane and Andrews testified at hearing DeAnda was in a leadership role, she engaged in fraud with program dollars, and she was not honest when confronted about the discrepancy in the rewards account balance. Andrews testified it is possible DeAnda would not have been terminated if she had been honest about what she had done.

Siouxland has a progressive discipline policy set forth in Exhibit C. The first step is a verbal warning for minor first offenses. The second step is a written warning for more serious issues or unacceptable behaviors. The third step is a suspension if an unacceptable performance or behavior continues. The fourth step is for the accumulation of continued unacceptable performance and behavior or “very serious offenses or behavior.” (Ex. C) Keane and Andrews testified Siouxland considered DeAnda’s behavior to be a very serious offense, and that Siouxland determined she needed to be terminated immediately. Siouxland terminated DeAnda and Koser on May 15, 2020. DeAnda and Koser had not been disciplined before for similar conduct.

Siouxland sent DeAnda a termination letter on May 15, 2020, as follows:

SHIP is terminating your employment effective today, 5/15/2020. This termination follows your administrative leave without pay that was effective 5/11/2020.

This termination is with cause and is a direct result of your actions – colluding with another employee to misappropriate federal grant funds belonging to the organization, authorizing the purchase of an unallowable cost of gift cards without prior authorization from your supervisor or the administrative office of SHIP, allowing non-SHIP staff to utilize company property for the purchase of personal items, the misconduct of lying directly to Beyond the Bell management about your involvement in the misappropriation of the funds, and subsequently attempting to coerce other co-workers to cover up the misappropriation. In this entire sequence of events, you also breached SHIP’s policies and procedures (clearly stated in the SHIP Employee Handbook and Policies and Procedures Manual) as it pertains to the use of credit cards, credit card accounts, code of conduct/misconduct, and purchasing guidelines and controls

We will need to collect the following organization property from you on Monday, May 18<sup>th</sup>, at 8:30 am. At this time, a personal check or cash must be provided to reimburse SHIP in the amount of \$125.95 for the fraudulent use of company funds for personal purchases. . . .

(Ex. C)

DeAnda reported she did her own investigation and learned her husband had used the Siouxland Sam’s Club card to make the purchases of groceries on March 12, 2020. DeAnda issued Siouxland a check for the amount of the purchase.

At hearing DeAnda testified she had showed poor judgment in failing to disclose the purchase and failing to get permission before having her husband purchase the gift cards in April 2020.

Keane, the business and finance director for Siouxland, testified she contacted the independent accounting firm that reviews the Siouxland accounts. The accounting firm told her the rewards funds on the Siouxland Sam’s Club account are restricted for federal grant purposes and the purchase of the gift cards is fraudulent under the program. Keane testified she believed DeAnda

needed to be terminated because of the fraud she conducted and her subsequent behavior of not being honest was not that expected of a leader in the organization.

#### **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.

In addition, 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).

I understand how DeAnda's husband made a mistake in purchasing the groceries with the Siouxland Sam's Club rewards. There was no evidence any other purchases were made by DeAnda for her family with the Siouxland Sam's Club account. However, I do not find DeAnda's other actions amounted to mistakes or that her conduct amounted to an isolated instance of poor judgment. There were multiple instances of poor judgment and DeAnda concealed facts and made false statements to Kempema. DeAnda knew Siouxland received federal funds for the program it operates. She requested permission to purchase gift cards for staff incentives in 2018. She did not make a similar request 2020 before having her husband purchase \$295.44 in gift cards. She also purchased \$100 in gift cards for staff incentives in 2019 using the Siouxland Sam's Club rewards account without receiving permission. The internal staff and auditors did not notice the purchase in 2019. Keane contacted the independent accounting firm regarding the most recent purchase and reported the accountant told her the purchase is considered fraudulent and is an inappropriate use of funds. DeAnda showed very poor judgment in making the purchase, but it is her later conduct of stating someone must have stolen the card and failing to report she had her husband purchase the gift cards which is troubling. DeAnda attempted to cover up what she had done and only admitted what she had done when confronted by Kempema. An employer is justified in firing an employee who lies when confronted about situations. Employees, especially employees in leadership roles, must be honest when they do something wrong. DeAnda was in a leadership role and she supervised other employees. She concealed what she had done and made misstatements about what she had done to Siouxland. I find Siouxland has established DeAnda engaged in disqualifying misconduct. The facts and circumstances involving Koser's case, which I also heard, are distinct from the facts and circumstances of this case. Benefits are denied.

## **DECISION:**

### **Regular Unemployment Insurance Benefits Under State Law**

The August 27, 2020 (reference 01) unemployment insurance decision denying unemployment insurance benefits is affirmed. Claimant was discharged for misconduct for a disqualifying reason. Unemployment insurance benefits are denied until the claimant has worked in and earned wages for insured work equal to ten times the claimant's weekly benefit amount after the claimant's separation date, and provided the claimant is otherwise eligible.

### **Pandemic Unemployment Assistance ("PUA") Under the Federal CARES Act**

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, the claimant may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance ("PUA") that may provide up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive an additional \$600 weekly benefit amount under the Federal Pandemic Unemployment Compensation ("FPUC") program if the individual is eligible for PUA benefits for the week claimed. The FPUC additional \$600 payment per week ended as of July 25th in Iowa. This means the \$600 weekly additional benefit stopped and at this time, no extension or change to the program has been made by Congress at this time. This does mean that you will see a corresponding decrease in your weekly benefit amount. The FPUC payments are not a state benefit and Iowa is unable to make any changes to the availability of this benefit. If a change takes place to this benefit in the future, IWD will share on the IWD website and social media. This decision does not address whether the claimant is eligible for PUA. If the claimant wishes to receive PUA benefits, the claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below:

**Note to Claimant:** If this decision determines you are not eligible for regular unemployment insurance benefits and you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance ("PUA"). **You will need to apply for PUA to determine your eligibility under the program. Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.** This decision denies benefits. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.



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October 23, 2020  
Decision Dated and Mailed

hlp/scn