

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CORISSA A MEEK
Claimant

MCPHAIL LAW FIRM PC
Employer

APPEAL 16A-UI-06044-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/01/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 19, 2016 (reference 01) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A telephone hearing was held on June 15, 2016. Claimant participated personally and was represented by Judith O'Donohoe. Employer participated through attorney Brian McPhail. Employer's Exhibits One and Two were received.

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: Claimant worked for employer as a legal assistant for approximately 22 years. Claimant was terminated on May 2, 2016.

In November 2012, claimant approached one of employer's clients about making a loan to her boyfriend. Claimant knew the client through her position as employer's legal assistant. Claimant's boyfriend was also employer's client at that time.

Ultimately, the client loaned money to a limited liability company formed by claimant's boyfriend. The loan was in the amount of \$20,000.00. The loan was not personally guaranteed by claimant's boyfriend. Claimant drafted the promissory note using employer's computer and stock forms. The top of the form claimant used for the promissory note included attorney Brian McPhail's name.

McPhail never reviewed the document and was not aware of the loan at the time it originated. Had McPhail drafted the promissory note, he would have asked both parties to give informed consent in writing of McPhail's conflict of interest. The client was very valuable to McPhail and McPhail would have never allowed him to make such a large loan without obtaining a personal guaranty from claimant's boyfriend.

Initially, claimant's boyfriend made two payments on the loan. No payments were made thereafter.

At some point, claimant wrote down a message about the loan and the fact it had been defaulted on. The message ended up in her shred basket and was not seen by McPhail until after claimant was terminated.

McPhail was unhappy with claimant's performance during the last months of her employment. McPhail felt claimant was spending too much time on Facebook, working too many overtime hours, and was responsible for missing petty cash. However, McPhail had not taken any formal disciplinary action against claimant or taken any steps to terminate her employment based on these issues.

During the last week of April 2016, a secretary told McPhail that claimant procured a loan for her boyfriend from one of employer's clients.

McPhail asked the client about the loan. The client informed McPhail of the terms of the loan and asked McPhail how he found out about it. The client informed McPhail that claimant's boyfriend had defaulted on the loan, and that he had been too embarrassed to talk about it. The client stated, "I guess I trusted Corissa too much."

McPhail checked if he had any file containing a copy of the promissory note. He did not. Eventually, McPhail found an electronic copy of the promissory note on claimant's work computer.

On May 2, 2016, McPhail sent claimant a text message stating:

I am terminating your employment here immediately. I do not want you on the premises. There are too many things that have made me not trust you. I will have your things at the PD tomorrow morning. Fabricating hours, missing cash, missing supplies, and having your time sheets made out for the entire year are one thing, but using confidential information to borrow money from a client and then stiffing him are completely improper.

Claimant responded:

I do not understand where any of this is coming from. I do not fabricate my hours, never ever took any cash, do not have my hours figured for a whole year, and never gave out confidential information. I thought you knew me better than that.

McPhail responded:

I thought I knew you, too. You facilitated a loan from [redacted] then made no attempt to pay him back is what I was talking about there. I will send you a check for unused vacation pay.

Claimant responded:

I mentioned him as someone who may be interested in investing. I never met with [redacted] nor gave out anything confidential. I had nothing to do with the loan. I was not a party to that agreement.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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). 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 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

While employer was unhappy with claimant's performance for some time, she was ultimately terminated when employer learned about the loan to her boyfriend. Claimant used knowledge gained through her employment to procure a loan of \$20,000.00 for her boyfriend. Claimant drafted the promissory note containing attorney McPhail's name without his knowledge. Claimant drafted the promissory note such that there was no personal guaranty on the loan. Claimant's boyfriend promptly defaulted on the loan. Claimant never informed McPhail of the situation.

Claimant asserts McPhail was aware of the loan and even reviewed the promissory note. I do not find her assertion credible for several reasons. The text message exchange between claimant and McPhail on May 2 corroborates McPhail's version of the story. I find McPhail's testimony, that he would have never allowed a valued client to make a \$20,000.00 loan without obtaining a personal guaranty, credible. I also find McPhail's assertion that he would have remembered doing the legal work on the transaction because both parties were current clients and he would have needed to procure informed written consent from both parties as he would have had a conflict of interest. I also find McPhail's testimony regarding the initial conversation with his client regarding the loan credible, as well as his testimony that he never saw any message from claimant regarding the loan or the fact it had been defaulted on until after claimant had been terminated.

Claimant's actions violated the standards of behavior that any employer has a right to expect from its employees. This is misconduct without prior warning or specific policy violation. Employer has met its burden to establish claimant was terminated for misconduct.

DECISION:

The May 19, 2016 (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as claimant is deemed eligible.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

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