

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DORIS J BUCKLIN
Claimant

APPEAL NO. 09A-UI-09066-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOEL JOHANNIS
Employer

**Original Claim: 05-10-09
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 15, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on July 10, 2009. The claimant did participate along with her witness, Jodi Cory, her sister. The employer did participate through Denise Lovig, House Supervisor. Employer's Exhibit One was received.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a companion and care giver, part-time, beginning January 3, 2009, through May 1, 2009, when she was discharged.

On April 2, the client the claimant was charged with caring for attacked her at work. The claimant was choked and bruised on her neck, chest, and arms. Her face was scratched. The claimant estimated that the attack went on for almost 20 minutes before help arrived. No one other than the claimant and the attacker witnessed what occurred. The claimant's shirt and bra were torn in the attack, which was confirmed by her sister, who saw her immediately after she returned home. The claimant filled out an incident report on the night of the attack, but was too shaken up to report all that had happened. The claimant later added information to her report about what had occurred on April 2. The claimant was eventually sent for medical treatment with a Dr. Mooney. The claimant reported her physical symptoms to Dr. Mooney. She told Ms. Lovig that she was uncomfortable around Joel, but was able to complete her work shifts. When away from Joel, the claimant began having panic attacks and Ms. Lovig wanted her to seek counseling. The employer would not pay for the claimant's counseling and she was told she could not continue working until she felt "comfortable" around Joel and had obtained counseling. The claimant had no health insurance benefits, so she was unable to obtain counseling. The claimant did not ask to have her hours taken away from her and she had worked with Joel after the attack.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 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.

871 IAC 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.

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). 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). 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).

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, employer incurs potential liability for

unemployment insurance benefits related to that separation. The employer stopped offering work to the claimant because she felt 'uncomfortable' around Joel after he had attacked her. The employer then required the claimant to obtain mental health counseling due to the attack but did not offer to pay for the counseling, and the claimant had no health insurance benefits that would cover counseling. The claimant did not ask to be removed from her job and no medical provider ordered that the claimant be removed. Ms. Lovig determined that the claimant should be removed but gave no criteria that the claimant had to meet or accomplish in order to be allowed to return to work. The claimant was effectively discharged on May 1 when she was removed from work by Ms. Lovig for feeling "uncomfortable" around Joel. The claimant's feeling "uncomfortable" was not job-related misconduct.

The driver's license issue is moot, as the claimant had been discharged from her position prior to the deadline for her to obtain the license. Even if the claimant had obtained the license, she would not have been allowed to work since she did not obtain the counseling required by Ms. Lovig.

The employer has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Benefits are allowed.

DECISION:

The June 15, 2009, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw