

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KARLA FISCHER
Claimant

APPEAL NO: 14A-UI-08108-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE ALARIS GROUP INC
Employer

OC: 02/23/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 28, 2014, reference 03, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 27, 2014. The claimant participated in the hearing. Robert Otos, Vice-President of Corporate Relations, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time case manager for The Alaris Group from May 19, 2014 to June 27, 2014. She was told her employment was terminated because she was “not a good fit” with the company and her “personality was too big.”

On May 30, 2014, the claimant’s supervisor expressed concern that the claimant was dressing inappropriately and interrupting during appointments. The supervisor followed up with the claimant June 2, 2014, and told her she could not wear jeans or shorts to meetings. On June 13, 2014, the claimant attended a customer event. Robert Otos, Vice-President of Corporate Relations, was told the claimant wore a very short skirt and left the meeting abruptly, shaking her head. On June 16, 2014, the claimant was asked to do some letters as soon as possible and did not complete the work June 16, 2014, but was observed sending emails. The claimant then forwarded documents from the employer’s computer to her personal computer in violation of the employer’s policy. On June 23, 2014, Mr. Otos had a phone conversation with the claimant’s manager. The manager complained about the claimant’s clothing, stated she did not provide timely expense and tracking forms even though she had been asked to do so several times, recounted the events of the June 13, 2014, customer event, stated the claimant

did not know how to access company training sites, and was not timely in completing required tasks. On June 27, 2014, Mr. Otos notified the claimant her employment was terminated after considering what her manager said and the fact her manager stated she was uncomfortable even introducing the claimant to accounts.

REASONING AND CONCLUSIONS OF LAW:

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

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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant worked for the employer for five weeks before her employment was terminated. During that time her manager expressed concern about her manner of dress, her behavior at a meeting which the claimant denies occurred, and her inability to satisfactorily perform her work. The claimant may not have been a good fit with this employer. However, the employer should accept responsibility for her failure in this position as well, as most of the issues described could be considered training issues. The claimant did not understand the dress code and the other problems listed detailed her inability to perform the job to the employer's expectations. Failure in good performance due to inability is not considered misconduct under the meaning of the law. Under these circumstances, the administrative law judge must conclude the employer has not met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The July 28, 2014, reference 03, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs