

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KELLY S REED
Claimant

IA DEPT OF HUMAN SVCS/ELDORA
Employer

APPEAL 19A-UI-02855-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/10/19
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 27, 2019, (reference 01) unemployment insurance decision that denied benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on April 24, 2019. Claimant participated. Employer participated through human resource supervisor Ed Gilliland and was represented by Trenton Kilpatrick. Employer's Exhibit 1 was received. Claimant's Exhibit A was 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 began working for employer on February 1, 2000. Claimant last worked as a full-time secretary I. Claimant was separated from employment on March 8, 2019, when she was terminated.

Claimant worked for the employer at its state training school in Eldora, Iowa.

Employer has a policy prohibiting contact with present or former students outside of the workplace. Employer also has a policy prohibiting any illegal conduct by an employee on or off duty that affects or has the potential to affect employer. Employer has a policy prohibiting the illegal use of controlled substances at any time. Finally, employer has a policy prohibiting employees from engaging in activity that is in conflict with their official responsibilities. Claimant was aware of the policies.

Claimant suffers from chronic pain. Claimant was scheduled to attend the Mayo Clinic Pain Rehabilitation Program in July 2018. As a result, claimant's medical provider was attempting to wean her off prescription pain killers prior to attending the clinic. Claimant had been taking the pain killers for three years and did not believe she would be able to work without them.

In May 2018, claimant purchased prescription pain killers from a former student outside of work. After making the purchase, the former student began blackmailing claimant. The student threatened claimant with giving information regarding her crime to the authorities, her employer, and the media if she did not pay the student money each month.

On February 8, 2019, claimant reported to employer that she had contact with a former student and purchased a controlled substance from the student and the student had been blackmailing her. Claimant also reported the information to law enforcement.

Claimant was suspended with pay while the employer investigated the report.

After reviewing the situation, policies, and information gathered by law enforcement, employer terminated claimant's employment on March 8, 2019.

Claimant had never been previously disciplined for similar conduct.

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, 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 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).

In this case, claimant engaged in an illegal activity with a former student outside of work. The administrative law judge recognizes claimant was in a dire mental state at the time the situation occurred. However, the fact remains that claimant's actions were in violation of employer's policies and in deliberate disregard of its interests. Claimant's actions amount to misconduct, even without prior warning.

DECISION:

The March 27, 2019, (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 she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Christine A. Louis
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Decision Dated and Mailed

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