

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALLYSEN J PIERCE

Claimant

AMANDA ENTERPRISES INC

Employer

APPEAL NO: 12A-UI-11596-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/02/12

Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The employer appealed a department decision dated September 21, 2012, reference 01, that held claimant was not discharged for misconduct on September 5, 2012, and benefits are allowed. A telephone hearing was held on October 22, 2012. The claimant, current employee, Linda Buechler, and former employees, Samantha Timmerman, and Sara Arguello, participated. Amanda Johnson, Owner/Manager, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant was re-hired as a full-time house sitter on March 30, 2012, and last worked for the employer on September 5. Claimant did work as an assistant manager before she stepped-down from this position shortly before her last day of work. She continued working as a house cleaner, and she gave no notice she was going to quit employment.

The employer called claimant into her office to discuss her behavior on September 5. She was asked how her cleaning work was going, and then the employer said "I don't think this is working out. After repeating this statement, claimant asked "Are you firing me?" and the reply was "I think so". Claimant asked why and the employer responded with attitude. Claimant left the office and announced to co-workers she had just been fired and left the office. She briefly returned for some personal things and left when the employer told her to do so.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes the employer has failed to establish claimant was discharged for misconduct in connection with employment on September 5, 2012, for unprofessional behavior.

The employer testimony was refuted by the claimant who offered witnesses that agree her employment was terminated. What is very clear is that employer made claimant leave the office when she returned to get her personal things that further supports the conclusion this was an involuntary separation. Since the employer contends this was a voluntary separation job disqualifying misconduct is not established.

DECISION:

The department decision dated September 21, 2012, reference 01, is affirmed. The claimant was not discharged for misconduct on September 5, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css