

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NANCY A PHIPPS

Claimant

APPEAL NO. 07A-UI-01573-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FOUR SEASONS TRAVEL

Employer

**OC: 12/31/06 R: 01
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer, Four Seasons Travel, filed an appeal from a decision dated February 12, 2007, reference 02. The decision allowed benefits to the claimant, Nancy Phipps. After due notice was issued a hearing was held by telephone conference call on February 28, 2007. The claimant participated on her own behalf. The employer participated by Owner Linda Bruck.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Nancy Phipps was employed by Four Seasons Travel from August 3 until December 25, 2006, as a part-time assistant. Her main job duties were to answer the phone, transfer calls or take messages. She made frequent errors in the message she took, misspelling names and not getting other necessary information. Owner Linda Bruck did speak with her about these errors and finally gave her a check list to use to make sure she got all of the necessary information.

At no time was the claimant counseled that her job would be in jeopardy if substantial improvement was not seen. Her errors continued, giving the other workers the wrong client names and similar mistakes. The final incident was in mid-December when she gave a message to an agent which said "Diane" would be coming in to the office to see her, but there was no client by that name. The client's name was "Haley" and the claimant had no explanation as to why the name was incorrect. Ms. Bruck told the claimant at that time she was being "let go" due to lack of work but asked her to stay until December 25, 2006, which she did. The employer did not intend to lay her off for lack of work but to discharge her for continuing errors.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant was discharged for making excessive errors in taking and relaying phone messages to other employees. Although this was a major component of the work she had been hired to do, she lacked experience in this type of work. The employer acknowledged Ms. Phipps was "just not very good" at this type of office work, but never formally counseled the claimant to notify her that her job was in jeopardy if she did not make substantial improvement.

Misconduct is willful and deliberate conduct not in the best interests of the employer. There is no evidence of willful failure on the claimant's part to do her job to the best of her ability. Mere failure to perform to the expectations of the employer is not misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of February 12, 2007, reference 02, is affirmed. Nancy Phipps is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs