

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAKISHA L ALLEN
Claimant

APPEAL NO. 13A-UI-04887-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLACK HAWK COUNTY
Employer

OC: 03/31/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 25, 2013, reference 04, which concluded that the claimant was ineligible for unemployment insurance benefits. A telephone hearing was held on May 31, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. The employer failed to respond to the hearing notice and did not participate in the hearing.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked for the employer as a full-time developmental aide. She was hired on either August 8, 2013 or August 18, 2013. Her last day of work was “right before Christmas.” The claimant received a letter dated December 27, 2012, which ended her employment. The claimant has no idea why she was terminated. The employer did not participate in the hearing and did not provide any evidence on when and why the claimant was terminated.

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. There is no evidence of misconduct in this record. The employer failed to respond to the hearing notice and did not participate in the hearing. As a result, there is no testimony on when the claimant was terminated or why. The claimant testified that she does not know why she was terminated. Under these circumstances, the administrative law judge must rule that the claimant is eligible for unemployment insurance benefits, provided she meets all other eligibility criteria.

DECISION:

The unemployment insurance decision dated April 25, 2013, reference 04, is reversed. Unemployment insurance benefits are allowed provided the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs

