

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**RITA SLIGER
2056 TOLBERT AVE
CLARINDA IA 51632-4060**

**SHENANDOAH ANIMAL HOSPITAL INC
PO BOX 216
401 S FREMONT
SHENANDOAH IA 51601-0216**

**Appeal Number: 06A-UI-05977-BT
OC: 08/28/05 R: 01
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96 5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Rita Sliger (claimant) appealed an unemployment insurance decision dated June 2, 2006, reference 04, which held that she was not eligible for unemployment insurance benefits because she was discharged from Shenandoah Animal Hospital, Inc. (employer) for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 28, 2006. The claimant participated in the hearing. The employer participated through Margaret Brady, DVM. Claimant's Exhibit A and Employer's Exhibits One through Four were admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time office manager/receptionist from September 25, 2005 through May 17, 2006, when she was discharged for failure to perform her duties. On May 8, 2006, another employer was working for the claimant while she was gone and found an envelope in her drawer that held \$685.00 in cash with no written documentation. The claimant was responsible for making daily deposits and keeping accurate records of the financial transactions. Upon learning of the unexplained funds, the employer began to search for the daily cash drawer log but could only find a partial log with the latest entry date of January 2006. The employer had no other option than to wait for the claimant's return on May 10, 2006. However, the claimant had no explanations and indicated the money had been there for several weeks. The employer went to retrieve the partial log that had been found earlier and the claimant had thrown it away. The claimant admitted the drawer had not been counted for weeks. The employer assigned the claimant the task of trying to ascertain where the money came from so it could be properly credited and had another employee performing the claimant's regular duties. When the employer checked with the claimant later that day, the claimant was not looking into the books but was instead entering bills into the computer, which is part of her regular work.

The employer began a thorough investigation into the records and found numerous errors in the claimant's work. The computer has an option in which transactions can be entered out of sequence. Two new staff members entered the information in February 2006 and only had three errors or transactions out of sequence. The employer discovered the claimant had 22 errors on April 20, 26 errors on April 28, and 24 errors on May 10. The errors were careless since they were made within minutes of the other entries. The employer also discovered that since March 2006, the claimant began ordering the wrong products and supplies. They were not correct or she ordered vastly more than what was needed and what had been previously ordered. Prior to March 2006, the claimant had no problem completing her job duties properly. Since the claimant's return on May 10, 2006, she had a negative attitude and was intentionally rude and disrespectful to clients and co-workers. She had received a written warning for this same issue on January 20, 2006. Since the claimant refused to accept any responsibility for the problems in the office and her attitude was getting worse, the decision was made to discharge her.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for failure to properly perform her job duties. When an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. Kelly v. Iowa Department of Job Service, 386 N.W.2d 552 (Iowa App. 1986). The claimant properly completed her job duties from September 2005 to March 2006, and there was no question she was capable of performing the work. Her refusal to properly perform her duties after that date and her negative attitude was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated June 2, 2006, reference 04, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

sdb/kkf