

**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**

**Appeal Number: 04O-UI-01964-ET
OC: 10-26-03 R: 02
Claimant: Respondent (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.**

**SARAH LEWIS
208 GLENDA DRIVE #9
MARSHALLTOWN IA 50158**

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.

**REGIS CORPORATION
c/o EMPLOYERS UNITY INC
P O BOX 749
ARVADA CO 80006-9000**

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/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 20, 2003, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 25, 2004. The claimant participated in the hearing. Cheryl Safley, Manager, and Sandy Fitch, Employer’s Representative, participated in the hearing on behalf of the employer. Employer’s Exhibits One and Two were admitted into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time stylist for Regis Corporation from August 21, 2002 to October 24, 2003. She was discharged for using an unauthorized product, failure to work her assigned hours, and allowing other people in the back room. On October 20, 2003, the claimant used a saltwater mixture on a client. The claimant learned of the technique at a continuing education seminar and was told it would make a color treatment last longer. The employer had not approved the procedure and when Manager Cheryl Safley asked the claimant what she was doing the claimant indicated she had called someone in the corporate office and received approval to use the saltwater. On September 8, 2003, the claimant came in late and left early. The employer testified the claimant was absent October 6, 8, 10, 11, 13 and 14, 2003. The claimant testified she was not absent October 10 and 11, 2003, but had been granted time off, that she worked October 13, 2003, and was not scheduled October 14, 2003. The employer testified the claimant allowed non-employees in the back room. The claimant denies that she did so but agrees that one time when her daughter was in the salon she went behind the counter to get stickers. The employer testified the claimant received a verbal warning in writing February 28, 2003, because of her attendance and a verbal warning in writing May 19, 2003, for using her cell phone while at work (Employer's Exhibits One and Two). The claimant did not sign either warning and denies receiving the warnings or ever being told her job was in jeopardy. The employer terminated the claimant's employment October 24, 2003.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). While the claimant's testimony was not particularly credible, and she refused to take responsibility for any of the issues cited by the employer, her explanations regarding the use of the saltwater as well as why her daughter was behind the counter were reasonable. The parties provided conflicting testimony about the claimant's attendance but because the employer bears the burden of proof and did not rebut the claimant's testimony with a schedule or time card or similar documentation, it has not established the claimant failed to work her assigned hours. Additionally, the verbal warnings in writing were not signed by the claimant and the employer did not issue any written warnings or tell the claimant her job was in jeopardy. Consequently, the administrative law judge concludes the employer has not met its burden of proving disqualifying job misconduct as defined by Iowa law. Benefits are allowed.

DECISION:

The November 20, 2003, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/b