

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MELINDA S DOLAND**  
Claimant

**APPEAL NO. 09A-UI-03666-E2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEARTLAND EMPLOYMENT  
SERVICES LLC**  
Employer

**Original Claim: 02/01/09  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated February 24, 2009, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 1, 2009. The claimant participated personally. The employer participated by Adam Aswegan, Human Resource Director, and Wendy Ager, Administrator. Exhibits 1, A, and B were admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: The claimant last worked for employer on January 22, 2009. She was a certified nurse's aide (CNA). On January 22, 2009, the claimant's supervisor stated she was going to supervise and audit some of the work she was doing on patient care. The claimant became upset. She started arguing with her supervisor. Wendy Auger, Administrator, was called and spoke to the claimant and her supervisor on the phone. The claimant was told to leave, as she was too upset to work. The claimant eventually left. The claimant was told to come in the next day to discuss this matter. The claimant was to come in around 2:00 on January 23, 2009. The claimant did not come in. The employer then wrote up a discharge notice on January 23, 2009 but did not make it effective immediately. The claimant was scheduled for two other meetings with her employer and did not attend. When she missed her third meeting, the employer terminated her. The claimant has been receiving treatment for medical conditions that have been aggravated and was hospitalized in December 2008. The claimant did not provide evidence the reason she did not attend the scheduled meetings after January 22, 2009 was because of her health issues.

## 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.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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 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. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

In this matter, the evidence established that the claimant was discharged for an act of misconduct when the claimant violated the employer's policy concerning insubordination and the three no-shows for interviews. The employer had not made a final decision to terminate the claimant until her third no-show for an interview. The claimant's failure to make three scheduled interviews is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees.

The administrative law judge holds that the claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated February 24, 2009, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

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James Elliott  
Administrative Law Judge

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Decision Dated and Mailed

jfe/kjw