

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SAMIRA L ZUNIGA**  
Claimant

**APPEAL NO. 10A-UI-04451-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SEATON CORPORATION**  
Employer

**OC: 02/14/10**  
**Claimant: Respondent (1)**

Section 96.5-2-A – Misconduct

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated March 12, 2010, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 6, 2010. Claimant participated. Employer participated by Susan Murphy. Rosova Salinas was a witness for the employer. The record consists of the testimony of Susan Murphy; the testimony of Rosova Salinas; the testimony of Samira Zuniga; and Employer's Exhibits 1-8. Anna Cox served as Spanish interpreter.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

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

The employer is a staff management company. The claimant was hired on January 14, 2008, and given an assignment at Proctor/Gamble as a production worker. The claimant was later promoted to recruiter and then to account supervisor. She was responsible for supervising other associates on her shift and interacting with Proctor/Gamble personnel. Her last day of work was February 11, 2010. She was terminated on February 16, 2010. The reason for her termination was the employer's belief that she had participated in false documentation of an associate's absence from work.

The employer has a policy that if one of its workers (associates) calls in an absence, that associate then loses \$.50 per hour for every hour worked that week. If, however, the absence is due to illness and the associate provides a doctor's excuse, then that penalty does not apply. Rosova Salinas did call in an absence and a doctor's excuse came to the attention of Rachel Leist, who was responsible for supervising employees at the Proctor/Gamble site. Ms. Leist examined the doctor's excuse and determined that it was not valid. Ms. Leist questioned Ms. Salinas, who denied having provided the doctor's excuse. The employer believed that the

claimant prepared the doctor's excuse and submitted it on behalf of Ms. Salinas, something the claimant denied.

**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 leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct 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.

In this case, the employer contends that the claimant either prepared or at the very least passed on a false doctor's excuse concerning another employee - Rosova Salinas. Ms. Salinas did call in to be excused from work. She denied, however, that she provided a doctor's excuse or asked that an excuse be passed on to the employer so that she would not be penalized for her absence. The claimant denied repeatedly that she had anything to do with the doctor's excuse. She said that she did not even know how to prepare an excuse. The false excuse was not part of the record and therefore the administrative law judge could not make an independent assessment concerning that excuse. Ms. Leist also did not participate in the hearing and the credibility of her testimony could not be determined.

The administrative law judge concludes that the employer has not met its burden of proof to show misconduct. The claimant adamantly denied having anything to do with the excuse and Ms. Salinas's testimony, taken as a whole, simply establishes that she did not have any knowledge of the excuse. Given the state of this record, there is insufficient evidence to show misconduct. Benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated March 12, 2010, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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