

**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**

**CRYSTAL D O’CONNOR
UNIT 12101
8601 WESTOWN PARKWAY
WEST DES MOINES IA 50266-1626**

**SHADOW LLC
L A WEIGHT LOSS
C/o MERIT RESOURCES
4165 - 120TH ST
DES MOINES IA 50323**

**Appeal Number: 06A-UI-05089-A
OC: 04-16-06 R: 02
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Crystal D. O’Connor filed a timely appeal from an unemployment insurance decision dated May 3, 2006, reference 01, which disqualified her for benefits. After due notice was issued, a hearing was held on June 7, 2006, with Sheila Siler of Merit Resources participating on behalf of the employer. Ms. O’Connor did not participate in that hearing. The administrative law judge reopened the record at the claimant’s request after learning that the claimant had not been able to participate in the hearing due to an ill child. A subsequent hearing was held on June 27, 2006. Both Ms. Siler and Ms. O’Connor participated and area supervisor Kendall Bramwell also testified. Employer Exhibit One was admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Crystal D. O'Connor was employed by L A Weight Loss from June 14, 2004 until she was discharged April 13, 2006. She last worked as a center manager. On April 12, 2006, Area Supervisor Kendall Bramwell received a call from a client complaining about a conversation held with Ms. O'Connor on March 10, 2006. Based on this complaint and without asking Ms. O'Connor for her side of the story, Ms. Bramwell discharged Ms. O'Connor on April 13, 2006.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in this record establishes that the claimant was discharged for disqualifying misconduct. It does not.

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 proof. See Iowa Code section 96.6-2. Although hearsay evidence is admissible in contested case proceedings such as this, the administrative law judge is not required to give the hearsay as much weight as evidence given by witnesses with firsthand knowledge. A decision may be based on hearsay evidence only if it is of the quantity and quality that an individual would rely upon in making a serious decision in his or her personal life. See Iowa Code section 17A.3.

Ms. Bramwell's testimony of the complaints by the client were hearsay. The client was not present in the hearing room and was not available to be questioned by the administrative law judge or by the claimant. Furthermore, Ms. Bramwell acknowledged in her testimony that she had not asked Ms. O'Connor for her version of the incident. While Ms. Bramwell spoke to the assistant manager, that person also was not called to testify. The claimant testified from firsthand knowledge of her statements. While that testimony indicates the client and she were frustrated with one another, it does not indicate deliberate actions contrary to the employer's interests. The administrative law judge concludes that disqualifying misconduct has not been established by the evidence in this record. Consequently, no disqualification may be imposed.

DECISION:

The unemployment insurance decision dated May 3, 2006, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

kkf/pjs