

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LISA L THEN**  
Claimant

**APPEAL NO. 12A-UI-15167-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DUBUQUE COUNTY**  
Employer

**OC: 12/02/12**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Lisa Then (claimant) appealed a representative's December 20, 2012 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Dubuque County (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 29, 2013. The claimant participated personally. The employer participated by Cathy Hadley, Administrator, and Wendy Fadness, Director of Nursing. Irene Taylor observed the hearing. The employer offered and Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**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 hired on February 20, 2009, as a full-time licensed practical nurse/charge nurse. The claimant signed for receipt of the employer's policies on February 20, 2009. The employer issued the claimant warnings on December 16, 2010, January 4, November 8, 2011, and February 1, 2012, for failure to follow instructions. The employer notified the claimant that further infractions could result in termination from employment.

The claimant's father and a co-worker's husband were long time enemies. The claimant's father recently passed away. The co-worker's husband wanted two of the claimant's father's cars and was willing to pay the claimant's mother any amount of money for them. This information was passed from the co-worker to the claimant to the claimant's mother. The mother did not want to sell the cars to her husband's enemy. The cars were taken to a junk yard and sold for scrap. The co-worker's husband was mad and the co-worker stopped talking to the claimant.

On November 25, 2012, co-worker told the employer that she saw a ream of the employer's paper in a bag the co-worker gave the claimant. On November 29, 2012, the employer placed

the claimant on paid administrative leave for suspected theft of a ream of paper. The employer told the claimant not to talk to anyone about what was going on in the investigation.

Later another employee said that no other employees had access to the area with the paper even though other employee's gave statements indicating they were in the area. Another employee gave a statement saying she left a ream of paper somewhere and then it was gone.

On November 30, 2012, the claimant arrived in the employer's parking lot to go into a meeting with the employer. A social worker saw the claimant and greeted her saying it was a nice day. The claimant responded that it was not so nice for her because she might be fired. The claimant said she had to go in and talk to the employer but the social worker might read about it in the paper and there might be a lawsuit. When the claimant went inside law enforcement was present but no charges were ever filed.

On December 3, 2012, the employer terminated the claimant for suspected theft of a ream of paper and telling a social worker that she might be fired, there might be a lawsuit and it could be in the paper.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The employer was not able to provide any evidence of a final incident of misconduct. The employer did not prove that the claimant took the ream of paper. The witness statements are contradictory. The employer did not prove that the claimant did not follow its instructions regarding discussion of the investigation. This administrative law judge does not find that the claimant's statements to the social worker violated the employer's instructions. The instructions were vague, unclear and verbal. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

**DECISION:**

The representative's December 20, 2012 decision (reference 01) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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