

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERESA D ROWAN
Claimant

APPEAL NO. 11A-UI-05912-ST

DSI CORPORATION
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/03/11
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated April 26, 2011, reference 01, that held she was discharged for misconduct on February 21, 2011, and that denied benefits. A telephone hearing was held on June 13, 2011. The claimant participated and was represented by Robert De Kock, attorney at law. Denise McDonald, regional operations manager, and Penny Johnston, area operations manager, participated for the employer. Employer Exhibit 1 was received evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began employment on April 7, 2010, and last worked for the employer as a general cleaner/day porter on February 23, 2011. The claimant received an employee handbook that contained the policies of the employer. The smoking policy states the employer is obligated to observe the smoking policy of each individual customer. Violation is cause for disciplinary action up to and including termination.

At the time of hire, the employer explained the no smoking policy of the employer. Claimant was told she was not to smoke in any client building. When she was assigned to customer Gerdau, Ameristeel, she watched a safety video that included the no smoking policy in any building.

On February 18, 2011, manager Johnston observed claimant smoking in the janitor trailer on Gerdau premises. There is a no smoking sign in the trailer. Claimant admitted at the time of being suspended on February 21 she was smoking. The trailer contains stored chemicals.

The employer suspended claimant on February 21 and discharged her on February 23 for what it considered was a gross misconduct violation of the no smoking policy.

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.

The administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on February 23, 2011, for violation of company policy.

The claimant knew the employer no smoking policy due training and receipt of the written policy. The policy states that a violation may result in termination. Her disregard of the policy by smoking is intentional and the violation constitutes job-disqualifying misconduct.

DECISION:

The department decision dated April 26, 2011, reference 01, is affirmed. The claimant was discharged for misconduct on February 23, 2011. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw