

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

OLLIE RUTH EASLEY
Claimant

APPEAL NO. 08A-UI-10435-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FEJERVARY HEALTH CARE CENTER INC
Employer

OC: 08/31/08 R: 04
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Fejervary Health Care Center filed a timely appeal from an unemployment insurance decision dated October 28, 2008, reference 01, that allowed benefits to Ollie Ruth Easley, hereinafter referred to as Ruth Easley. After due notice was issued, a telephone hearing was held November 25, 2008, with Ms. Easley participating. Dietary Manager Debra Westphal testified for the employer, which was represented by Frank Eckert of Unemployment Services.

ISSUE:

Was the claimant discharged for misconduct in connection with her employment?

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: Ruth Easley was employed by Fejervary Health Care Center from July 16, 1999, until she was discharged on or about September 5, 2008. She last worked as a cook. The sole incident leading to the discharge occurred on September 2, 2008.

Ms. Easley reported to work at 5:30 that morning. A delivery truck was waiting with the semi-weekly delivery of food products, including some frozen foods and others that needed refrigeration.

Ms. Easley and the two individuals who work with her set about their normal duties of preparing the breakfasts and lunches of people who had to leave the facility for dialysis. Dietary Manager Debra Westphal arrived between 7:00 and 7:30. The frozen and refrigerated foods had not yet been put away because Ms. Easley and the others had been working shorthanded. This incident led to Ms. Easley's suspension and dismissal.

Ms. Easley understood the procedure to be that the cook was responsible for putting the food away only in the absence of the dietary manager.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence 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.

The employer has the burden of proof. See Iowa Code section 96.6-2. Ms. Westphal testified that she could not recall ever having told Ms. Easley that it was always her responsibility to see that the food was properly stored. She did not contradict Ms. Easley's testimony that the morning crew was working shorthanded and that the first order of business of the day was to prepare breakfast and lunch for the dialysis residents. The evidence submitted for this record does not establish that Ms. Easley deliberately disregarded a specific order or a known policy. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated October 28, 2008, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw