

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MELISSA A EBERLY
Claimant

KIMMES ENTERPRISES LLC
Employer

APPEAL 15A-UI-06874-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/24/15
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 8, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 20, 2015. Claimant participated. Employer participated through representative Sarah Emery, manager Eric Finch, and Brett Kimmes. Attorney Marvin Miller participated as claimant's representative. Employer Exhibits 1 and 2 were admitted into evidence over claimant's objection for timeliness.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a clerk from May 2011, and was separated from employment on May 26, 2015, when she was discharged.

The current employer took over business operations on December 9, 2014. From December 9, 2014 until May 25, 2015, claimant had received no written warnings from the employer. On May 26, 2015, Mr. Finch had a meeting with claimant regarding her poor job performance. During this meeting, Mr. Finch presented claimant with a written warning regarding poor job performance. Claimant did not agree with the reasons for cited on the written warning. Claimant refused to sign the written warning. Employer Exhibit 1. Mr. Finch explained to claimant if she did not sign the written warning, she would be discharged. Claimant still refused to sign the written warning. The employer discharged claimant for refusing to sign the written warning.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Failure to sign a written reprimand acknowledging receipt constitutes job misconduct as a matter of law. *Green v Iowa Dep't of Job Serv.*, 299 N.W.2d 651 (Iowa 1980).

Mr. Finch met with claimant on May 26, 2015. During this meeting, Mr. Finch gave claimant a written warning. All claimant would be doing by signing the written warning would be to acknowledge that she had read the written warning and understood it. Employer Exhibit 1. Claimant refused to sign the written warning, even after the employer told her she would be discharged for not signing the written warning. Employer Exhibit 1. The employer has met its burden of proof in establishing disqualifying job misconduct. Benefits are denied.

DECISION:

The June 8, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs