

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY A ROBINSON
Claimant

APPEAL NO. 12A-UI-13037-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRAY TRANSPORTATION INC
Employer

OC: 09/30/12
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Gray Transportation, filed an appeal from a decision dated October 26, 2012, reference 01. The decision allowed benefits to the claimant, Kimberly Robinson. After due notice was issued a hearing was held by telephone conference call on December 3, 2012. The claimant participated on her own behalf. The employer participated by President Darrin Gray. Exhibits One, Two and Three were admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Kimberly Robinson was employed by Gray Transportation from September 20, 2011 until October 3, 2012 as a full-time parts manager working 12:30 p.m. until 8:00 p.m. For some period of time she had been using company e-mails to communicate with a co-worker extensively about non-work-related matters. These included discussing lunch plans and complaining about problems in her personal relationship. At one point she said the company was a “shit place.”

On October 2, 2012, she announced to Service Manager Andy Welch she could not “handle this shit today,” and she was leaving. Mr. Welch pointed out this was her evening to be “on the phones” and he had personal plans. She replied, “I had personal plans once, deal with it.” She left without permission.

The next day she returned to work and President Darrin Gray spoke with her. He asked if she thought it was necessary for the company to work around her personal problems and she said no. He advised her at that time she was no longer employed.

Kimberly Robinson has received unemployment benefits since filing a claim with an effective date of September 30, 2012.

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 claimant left work without permission from her supervisor. Although she did advise him she was leaving this is not the same as getting authorization. Mr. Welch made it clear she was expected to be on the phones that night but she ignored that and still went home. Her personal problems do not constitute an emergency requiring her to go home immediately and such problems should be left at home, not brought into the workplace.

In addition, she used company equipment and communications to tie up her work time and that of her co-worker instead of attending to her job duties, and preventing her co-worker from attending to hers. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the

overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of October 26, 2012, reference 01, is reversed. Kimberly Robinson is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs