

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBRA D SHELDAHL
Claimant

APPEAL NO: 07A-UI-10091-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PROFESSIONAL RESOURCES INC
Employer

**OC: 09/30/07 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Professional Resources, Inc. (employer) appealed a representative's October 24, 2007 decision (reference 01) that concluded Debra D. Sheldahl (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 30, 2007. The claimant participated in the hearing. Lisa Martin appeared on the employer's behalf and presented testimony from one other witness, Shauna Simpson. During the hearing, Employer's Exhibits One and Two and Claimant's Exhibit A were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 27, 2004. Since July 2006 she worked full time as staffing supervisor at the employer's Winterset office of its temporary employment firm. Her last day of work was September 25, 2007. The employer discharged her on that date. The reason asserted for the discharge was insubordination and failure to follow instructions.

The employer's business was purchased by a new company at the end of May 2007, and as a result a new payroll system was implemented. The claimant had gone through a variety of training procedures on the new system, but was still having issues for which she would periodically contact the employer's corporate office. The claimant's new area manager, Ms. Martin, instructed the claimant on several occasions that she should know the system well enough and that she should not further contact the corporate office for assistance. Most recently Ms. Martin had sent the claimant an email on September 20 reminding the claimant she should not be contacting the corporate office for questions; however, on September 21 the claimant did make an inquiry of the corporate office. As a result, on September 22 Ms. Martin

gave the claimant a written final warning that “should this [reappear] at all, termination will follow.”

On September 22 the claimant and Ms. Martin also discussed a communication between the claimant and Ms. Simpson, the area staffing supervisor, which had occurred on September 17. The claimant had a specific question as to how a particular type of deduction for an overpayment of overtime should be coded, and Ms. Martin had not been available, so she had contacted Ms. Simpson. When Ms. Martin learned of the contact, she challenged the claimant as to whether the contact was for a basic deduction function for which the claimant had already been trained, which the claimant denied. On September 25 Ms. Martin recontacted Ms. Simpson, who indicated that the claimant had contacted her on how to code a deduction; when questioned at hearing, Ms. Simpson could not recall whether the claimant had further explained the specific scenario she was seeking to address. Concluding that the claimant had indeed contacted Ms. Simpson on a basic function she believed the claimant should have been able to complete, Ms. Martin proceeded to discharge the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant’s employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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.

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 focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer's interest, or
 2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is the employer's conclusion that she was overly dependent on persons other than herself to resolve payroll issues under the new system for which she had received training. Misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. Huntoon, supra. There is no evidence the claimant intentionally failed to master the new payroll system despite the training she had received. The employer has not demonstrated that the claimant was in fact capable of working correctly with the new system without outside assistance. Kelly v. Iowa Department of Job Service, 386 N.W.2d 552 (Iowa App. 1986). Further, to the extent the employer viewed the claimant's explanation of the contact with Ms. Simpson to be false, the fact that there was a semantic difference in the terminology being used does not establish that the claimant was being deceitful. Also, the contact preceded the final warning, and the employer has not demonstrated that under the circumstances of attempting to resolve a particular coding question it was unreasonable for the claimant to contact Ms. Simpson in the absence of Ms. Martin. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's October 24, 2007 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs