

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**WANDA J OLIVER
401 E BROADWAY
MOULTON IA 52572**

**COMMERCIAL RESOURCES INC
307 N 13TH ST
CENTERVILLE IA 52544**

**SARAH WENKE
IOWA LEGAL AID
112 E 3RD ST
OTTUMWA IA 52501-2903**

**Appeal Number: 06A-UI-00085-HT
OC: 11/27/05 R: 03
Claimant: Appellant (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Wanda Oliver, filed an appeal from a decision dated December 27, 2005, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on January 19, 2006. The claimant participated on her own behalf and was represented by Iowa Legal Aid in the person of Sarah Wenke. The employer, Commercial Resources, Inc. (CRI), participated by President Bill Burch and Executive Director Rachell Hoffman.

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: Wanda Oliver was employed by CRI from June 14,

2004 until November 18, 2005. She was a full-time residential associate working in the St. Joseph's facility.

The employer had been experiencing some drug theft and the Appanoose County Sheriff's Department was investigating. A representative from the investigating unit contacted Supervisor Cathy Berner and notified her that an employee at the St. Joseph's facility had been interviewed and she alleged that Ms. Oliver had given her a controlled substance while at work. The employer did not investigate the allegation further, did not interview the claimant or the other employee, but sent the claimant a letter notifying her she was discharged.

The claimant acknowledges she has a prescription for a pain medication which is a controlled substance. She used to take it to work with her because she sometimes needed the medication during the day. However, it had been stolen from her purse earlier in the year, along with other items, and she reported this. The employer then notified everyone to leave all such personal items locked in their car in the parking lot, and not to bring it into the facility. The claimant did not bring the prescription into the facility after that but did have Tylenol to take in case she needed pain relief. Ms. Oliver admits she gave a Tylenol to her co-worker on the day in question, a pill which looks a good deal like the controlled substance except for a line on it.

The claimant has been charged with distribution of a controlled substance after she was discharged, but that criminal matter has not been disposed of in the court system.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). In the present case, CRI has only given third-hand testimony from unidentified sources. The decision to discharge the claimant was based entirely on a report from the sheriff's office that another employee had alleged the distribution of a controlled substance.

The employer did not present testimony from the representative of the sheriff's department who made the call, anyone who interviewed the other employee, the supervisor who received the call, or the other employee herself. If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The employer has failed to establish, even by a preponderance of the evidence, that the claimant was discharged for substantial, job-related misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of December 27, 2005, reference 01, is reversed. Wanda Oliver is qualified for benefits provided she is otherwise eligible.

bgh/kjw