

**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**

**AMY D KINGSLEY
641 CEDAR ST
DAVENPORT IA 52802**

**IOC SERVICES LLC
1641 POPPS FERRY RD B1
BILOXI MS 39532 2226**

**Appeal Number: 04A-UI-08578-H2T
OC: 07-11-04 R: 04
Claimant: Appellant (1)**

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/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 5, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 30, 2004. The claimant did participate. The employer did participate through Jason True, Human Resources Manager. Employer's Exhibit One was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a cook full time beginning April 17, 1997 through July 15, 2004 when she discharged. On July 13, 2004, the claimant submitted a doctor's note that she had altered to include additional days off as excused by her doctor. At hearing, the claimant admitted to

adding the dates "7/10 & 7/11" to her doctors note excusing her from work. The employer's policy, which the claimant received, prohibits falsification of documents. Because the claimant was receiving FMLA she was required to present a doctors note that excused her from missing work on dates she was absent. Both the employer and the claimant later contacted the claimant's doctor, prior to the claimant being discharged. The doctor would not excuse the claimant from work on July 10 and 11. On the doctors excuse submitted by the claimant the word "tx" appeared. The claimant had previously submitted doctor's notes that contained the word "tx" in them.

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.

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 claimant knew that because she was on FMLA she needed to present a doctors excuse that excused her from work for each day she missed. The claimant knowingly altered the

doctor's note given to her by her physician to include dates for which the physician would not excuse her. The claimant knew or should have know under reasonable standards of conduct that altering the doctors not was not allowed. An employer has a right to expect employees to conduct themselves in a certain manner. The claimant disregarded the employer's rights by falsifying a doctor's note she presented to the employer. The claimant's intent in falsifying the note was to have her absence excused when her physician would not do so. The claimant's dishonesty and presentation of false documents to the employer is a disregard of the employer's rights and interests is substantial misconduct. As such, the claimant is not eligible to receive unemployment insurance benefits. Benefits are denied.

DECISION:

The August 5, 2004, reference 01, 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.

tkh/kjf