

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

DIANA K KING
401 E MARKET ST
PO BOX 234
PANORA IA 50216

CARE INITIATIVES
c/o JOHNSON & ASSOCIATES
NOW TALX UC EXPRESS
P O BOX 6007
OMANA NE 68106-6007

Appeal Number: 04A-UI-03142-RT
OC: 02-22-04 R: 01
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 for Misconduct

STATEMENT OF THE CASE:

The claimant, Diana K. King, filed a timely appeal from an unemployment insurance decision dated March 16, 2004, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on April 9, 2004, with the claimant participating. Carol Glasgow testified for the claimant. Cassandra Johnson, Administrator at the Panora Nursing and Rehab Center, participated in the hearing for the employer, Care Initiatives. Carmen Ramsay, Dietary Manager, was available to testify for the employer but not called because her testimony would have been repetitive and unnecessary. The employer was represented by Lynn Corbeil of Johnson & Associates, now TALX UC eXpress. The administrative law judge takes official notice of Iowa Workforce Development unemployment insurance records for the claimant.

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: The claimant was employed by the employer as a full-time cook from August 24, 1992 until she was discharged on February 16, 2004. The claimant was discharged for taking leftover food items home, in violation of the employer's policy. The employer has a policy in its employee guidebook providing that stealing, regardless of amount, from the employer is considered a critical type A offense, which can be subject to discharge for a first offense. The employer also has policies that it informs its dietary staff that although they may eat leftovers as a lunch, they are not permitted to take any leftovers home. At some point in the past, this policy was posted in the kitchen and presently employees are told of that at orientation. The claimant was aware of these policies and knew that her job would be in jeopardy for a violation. Nevertheless, on more than one occasion the claimant took leftover food home with her. At the time she did so she knew it was wrong and that it was prohibited by the employer's policies and that her job could be at stake. Previously, the claimant had received a warning about that behavior. The employer learned of this when it conducted an investigation when a bag of beef stock was found concealed in the employee bathroom on February 13, 2004. During the investigation the claimant admitted that she had taken leftovers home. The claimant had been observed doing so by a coworker, who provided a written statement. The claimant did this on more than one occasion. There were no other reasons for the claimant's discharge.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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).

In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for misconduct. The employer's witness, Cassandra Johnson, Administrator, credibly testified that while conducting an investigation concerning the concealment of certain food items in the employee bathroom, the claimant admitted that she had taken leftovers home on prior occasions. The claimant was also observed by a coworker doing so and that coworker provided a written statement. At the hearing the claimant conceded that she had done so. The claimant testified that she did not know how many times she had done so, but this implies that the claimant had done so on more than one occasion. The claimant's witness, Carol Glasgow, testified that the claimant had only done so on one occasion, but her testimony is not reliable nor credible because she only lived with the claimant during a small portion of the time that the claimant was employed by the employer. The claimant also testified that she knew that taking the leftover food items home was against the employer's policy and further knew that it would jeopardize her job. Nevertheless, the claimant did so, and was discharged. The claimant had even received a previous warning for this behavior. The administrative law judge is constrained to conclude that the claimant's behavior in taking leftover food items, in clear violation of the employer's policy and with knowledge of that by the claimant, is a deliberate act or omission constituting a material breach of her duties and obligations arising out of her worker's contract of employment and evinces a willful or wanton disregard of an employer's interest and is disqualifying misconduct.

Accordingly, and for all the reasons set out above, the administrative law judge is constrained to conclude that the claimant was discharged for disqualifying misconduct, and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless or requalifies for such benefits.

DECISION:

The representative's decision dated March 16, 2004, reference 01, is affirmed. The claimant, Diana K. King, is not entitled to receive unemployment insurance benefits until or unless she requalifies for such benefits.

b/b