

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KAYLA L BROOKS
Claimant

AMERICAN EYECARE PC
Employer

APPEAL NO. 14A-UI-09806-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/17/14
Claimant: Appellant (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated September 9, 2014, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on October 9, 2014. Claimant participated personally. Employer participated by Chris Jochims, with witness, Kim Eland.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on August 21, 2014. Employer discharged claimant on August 21, 2014 because of claimant's insubordination.

Claimant had experienced some difficulties in her interactions with the doctors, coworkers, and clients while working for employer. Claimant had received a verbal warning that her behavior needed to change on July 14, 2014, and was to receive a written warning on August 21, 2014 concerning a poor work attitude. The July 14, 2014 warning concerned situations where claimant refused to do tasks requested by doctors and was rude to customers.

Employer had a meeting with all staffers on August 20, 2014 that did not go well. Employer felt that a number of employees displayed poor attitudes and called a meeting to explain that this situation needed to change. Employer then was to meet with each of four employees that were providing employer difficulties. Claimant was one of the four employees to meet with employer. Claimant felt threatened at this private meeting. When claimant felt threatened at the meeting because she met with management by herself, she became confrontational with employer saying that he didn't have any idea what he was talking about and then saying that she was not going to be bullied into quitting and that her employer would have to fire her. Employer then terminated claimant's employment.

Claimant stated that employer had faulty equipment that made her job more difficult and put her in an upset mood. Claimant believed she worked in a professional manner and brought in new clients to work.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant was insubordinate to employer. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant knew that her attitude needed adjustment, but continued to be argumentative, negative, and insubordinate. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated September 9, 2014, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/css