

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANASTASIA GORDON
Claimant

APPEAL NO: 12A-UI-05995-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

TM1 STOP LLC
Employer

OC: 04/22/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 26.8(5) – Decision on Record

STATEMENT OF THE CASE:

The employer appealed a department decision dated May 15, 2012, reference 01, that held the claimant was not discharged for misconduct on April 20, 2012, and benefits are allowed. A telephone hearing was held on June 14, 2012. The claimant and employer did not participate.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having considered the evidence in the record, finds: The claimant began employment on April 28, 2010, and last worked for the employer as a full-time TSR on April 20, 2012. She was discharged for an inappropriate, side-bar conversation with a co-worker.

The employer did not respond to the hearing notice. Claimant was not available when called for the hearing.

REASONING AND CONCLUSIONS OF LAW

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.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on April 20, 2012. The employer failed to participate in this matter and establish job disqualifying misconduct.

DECISION:

The department decision dated May 15, 2012, reference 01, is affirmed. The claimant was not discharged for misconduct on April 20, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css