

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICKI C JOYCE
Claimant

APPEAL NO. 10A-UI-11146-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALVORD BETTERMENT COMMITTEE INC
Employer

OC: 07/27/10
Claimant: Respondent (1)

Section 96.5-2-a – Misconduct
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated July 27, 2010, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 23, 2010. Claimant participated. Employer participated by Dan Schreurs, president. The record consists of the testimony of Daniel Schreurs and the testimony of Vicki Joyce.

ISSUES:

Whether the employer filed a timely appeal; and
Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

On July 27, 2010, a representative issued a decision that held that the claimant was eligible for unemployment insurance benefits. The decision also states that the decision would become final unless an appeal was postmarked by August 6, 2010, or received by the Appeals Section on that date. The employer's appeal was faxed on August 6, 2010.

The employer operates a café in Alford, Iowa. The claimant worked as a cook. Daniel Schreurs, who is the president of the employer, had a step-son who worked at the café. Approximately one week before the separation of employment, the claimant gave him some over the counter medication recommended by her chiropractor. The step-son took the pills. The claimant gave him some more pills the next day and he showed them to his step-father. The step-son was on probation and his probation officer thought the pills were a barbiturate. Mr. Schreurs thought the pills were valium. The pills have never been tested. The claimant was asked to resign or she would be terminated. She elected to resign on May 29, 2010.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the employer timely appealed the representative's decision. Iowa Code section 96.6-2 provides that unless the affected party (here, the employer) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by the decision. The evidence established that the employer faxed in its appeal on August 6, 2010, and therefore the appeal was timely.

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Good

faith errors of judgment or discretion in isolated situations are not acts of misconduct. The employer has the burden of proof to show misconduct.

The claimant was terminated because the employer believed she had supplied valium to a 16-year-old employee, who was the step-son of the employer's president. The claimant testified that she gave the step-son a homeopathic remedy purchased over the counter, which had been recommended by her chiropractor. Mr. Schreurs believes the pills are valium but the pills have never been tested. No photographs of the pills were submitted for the hearing and it cannot be determined what the claimant may have offered to Mr. Schreurs' step-son. The claimant was asked to resign in lieu of termination, which she did.

There is insufficient evidence in this record to conclude that the claimant offered prescription medication to Mr. Schreurs' step-son. The claimant says she gave him a homeopathic, over-the-counter medication. The claimant may have used exceptionally poor judgment in doing this, but her actions are more akin to offering an aspirin to someone who has a headache. Absent more evidence, such as test results from the pills themselves or testimony from the step-son or other witnesses, the administrative law judge concludes that misconduct has not been established. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated July 27, 2010, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs