

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EDNA R KUIPER

Claimant

APPEAL NO. 07A-UI-00044-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLACK HAWK COUNTY

Employer

**OC: 11/05/06 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Edna Kuiper (claimant) appealed a representative's December 22, 2006 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Black Hawk County (employer) for conduct not in the best interests of the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 19, 2007. The claimant participated personally. The employer participated by June Watkins, Human Resources Director; Rhonda Bottke, Supervisor; and Arlene Prather-O'Kane, Nurse Program Manager. The employer offered one exhibit, which was marked for identification as Exhibit One. Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on March 15, 1990, as a full-time substance abuse evaluator/educator. The claimant became confused about the employer's direction and she thought she could manage the job better without the employer's instructions. The employer had become increasingly uneasy about the claimant's performance and absence from the office.

On October 11, 2006, the employer met with the claimant and instructed her to appear for work every day at 8:00 a.m. unless she had permission from one of her supervisors. The claimant wanted to take brochures to pharmacies and make personal contact with the pharmacists regarding the employer's programs. The employer told the claimant not to do this. The brochures were to be given to the visiting nurses who could take them to the pharmacies.

The claimant appeared for work at 8:00 a.m. for about one week. On October 18, 2006, she did not. At approximately 10:00 a.m. one of the claimant's supervisors began calling the employer's cellular telephone assigned to the claimant. The claimant did not answer and the supervisor left

a message. At 11:15 a.m. the claimant appeared at work and the employer met with her. The employer asked the claimant where she had been. The claimant gave a detailed schedule of her morning at the Boys and Girls Club, the health center, a middle school and a visiting nursing association. The employer was suspicious because the employer had just met with the health center.

The employer telephoned the health center and discovered the claimant had not been there that morning. The employer called the other places and they all reported that the claimant had not been to their establishments. The employer met with the claimant again. The claimant continued with the story about being to the four places and later said she was at pharmacies handing out brochures. The claimant told the employer a lie because she knew the employer did not want her going to the pharmacies. The employer telephoned the pharmacies and found that the claimant had not been seen in any of the pharmacies and none of them had the brochures.

On October 19, 2006, the claimant submitted to the employer her mileage for reimbursement. The claimant listed in order the pharmacies she visited on October 18, 2006. The first pharmacies she listed opened at 9:00 a.m. The employer met with the claimant again and told her there was no evidence she had visited the pharmacies. The claimant was confident the employer would find the brochures at the pharmacies. The employer telephoned the pharmacies again. Each pharmacy said the brochures were available then but not on October 18, 2006.

The employer suspended the claimant pending investigation on October 20, 2006. The employer terminated the claimant on November 9, 2006.

The testimony of the employer and claimant was contradictory. The administrative law judge finds the employer's testimony to be more credible because the claimant's testimony was inconsistent.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for 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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. She failed to follow instructions in reporting to work and in passing out brochures. She intentionally lied to the employer with regard to her activities. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

DECISION:

The representative's December 22, 2006 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw