

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANTE BAILEY
Claimant

APPEAL NO: 16A-UI-09967-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARSDEN BLDG MAINTENANCE LLC
Employer

OC: 06/12/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant/appellant filed a timely appeal from the July 14, 2016, reference 02, decision that denied benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 28, 2016. The claimant participated in the hearing. Candy Wickett, Area Manager and Edward Wright, Employer Representative, participated in the hearing on behalf of the employer. Department's Exhibit D-1 was admitted to the record.

ISSUE:

The issues are whether the claimant's appeal is timely and whether she was discharged for misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last known address of record on July 14, 2016. The claimant stated she did not receive the decision. The claimant moved September 1, 2016. She stated one day she "thought about" her unemployment insurance benefits and called the Department which told her to appeal. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by July 25, 2016. The appeal was not filed until September 13, 2016, which is after the date noticed on the disqualification decision. While the claimant's testimony was not particularly credible, because the claimant stated she did not receive the decision, the administrative law judge finds the claimant's appeal timely.

The claimant was employed as a full-time day porter for Marsden Building Maintenance from October 20, 2015 to June 9, 2016. She was discharged for failing to perform the essential functions of her job.

The claimant was assigned to work at a surgery center/clinic. She was suspended June 3, 2016, because the customer complained the claimant angrily told him the customer "treated

(her) like a slave at her job.” If the claimant was dissatisfied with a situation at her assignment she was expected to talk to her manager, Area Manager Candy Wickett, or human resources but she failed to contact any of the three.

The claimant was required to take boxes out to the trash and break them down if not already broken down. The claimant did not like to perform that job function and often let the trash pile up waiting for one of the clinic employees to put it in the receptacle or dumpsters. The claimant told clinic employees they needed to put the boxes in the trash can instead of on the floor.

The employer’s handbook, which the claimant signed in acknowledgement, states employees are not to display a negative attitude when working with clients and were not to talk about their problems or personal affairs with the customer’s staff.

After the employer became aware of the employer’s statements of the claimant complaining to the client it suspended the claimant June 3, 2016, and terminated her employment June 9, 2016.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant accused the client of treating her like a slave because she was unhappy the clinic staff was not breaking down boxes she was required to take to the trash. As a result of her dissatisfaction, the claimant started letting the boxes and trash pile up, refusing to perform the essential functions of her job.

The claimant also complained directly to the client rather than the employer about the client's treatment of her. The employer's handbook specifically states employees are not to complain to the client but instead need to talk to their manager, area manager, or human resources. The claimant did not talk to anyone connected with the employer before making her comments to the employer.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The July 14, 2016, reference 02, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/rvs