

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANETTE L BEDARD
Claimant

APPEAL NO. 08A-UI-07050-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOPE HAVEN INC
Employer

**OC: 08/19/07 R: 01
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Janette L. Bedard filed a timely appeal from an unemployment insurance decision dated July 25, 2008, reference 02, that disqualified her for benefits. After due notice was issued, a telephone hearing was held August 19, 2008, with Ms. Bedard participating and presenting additional testimony by Sandra Drown. Residential Manager Dennis Sassman participated for the employer, Hope Haven, Inc.

ISSUE:

Was the claimant discharged for misconduct in connection with her employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Janette L. Bedard was employed by Hope Haven, Inc. from January 8, 2008 until her discharge on June 27, 2008. She last worked as a lead instructor. On June 25, 2008, Residential Manager Dennis Sassman gave a direct order to Ms. Bedard that she not contact a certain client's parents. The order was given because of concerns over a previously planned trip that was being cancelled for financial reasons. Shortly after the conversation with Mr. Sassman, Ms. Bedard called the client's parents. Mr. Sassman learned of the conversation on June 26, 2008 when the parents contacted him. He discharged Ms. Bedard on the following day.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. It does.

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 question of whether refusal to follow instructions constitutes misconduct must be determined by evaluating both the reasonableness of the employer's order in light of all circumstances and the employee's reason for non compliance. See Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa App. 1985). The employer provided testimony that the order was given out of concern for the client's well being. The evidence persuades the administrative law judge that the claimant disobeyed the order because she disagreed with her supervisor's analysis. The administrative law judge does not consider this to be a compelling reason to deliberately disobey a direct order. The claimant was insubordinate. Benefits are withheld.

DECISION:

The unemployment insurance decision dated July 25, 2008, reference 02, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs