

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TISHA M SMITH
Claimant

APPEAL NO: 12A-UI-13572-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLACK HAWK COUNTY
Employer

OC: 10/14/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

The claimant appealed a department decision dated November 2, 2012, reference 01, that held she was discharged for misconduct on October 12, 2012, and benefits are denied. A telephone hearing was held on December 12, 2012. The claimant, and witnesses, Debra Vivian, an employee, and Terry Smith (father) participated. Doug Meyer, HR Generalist, and Carol Laurie, Director Health Services, participated.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on August 3, 2009, and last worked for the employer as a full-time C.N.A. on August 24, 2012. She was granted maternity FMLA beginning August 25.

The employer received a dependent adult abuse allegation against claimant on September 11 and began an investigation. Claimant was alleged to have abused resident BS. The employer learned one allegation occurred on July 21. Claimant was called in for an interview on September 21 and questioned about information reported to it concerning abuse. Claimant was not told she had been accused of abuse.

On October 10 the employer terminated claimant for dependent adult abuse. It did not wait for DHS to conclude its investigation and no founded complaint had been issued.

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 claimant was discharged for misconduct in connection with employment on October 12, 2012.

The employer witnesses did not have personal knowledge of the abuse allegations and it failed to offer witnesses and/or witness statement to the events. In addition, the only date the employer could establish for an abuse allegation is July 21 that is not considered a current act of misconduct. There is no explanation why employees would wait to report abuse to the employer on September 11. Since claimant remained on maternity leave there would have been no reason for the employer to hasten termination on October 11 rather than wait on whether DHS made a founded complaint.

Job disqualifying misconduct is not established

DECISION:

The department decision dated November 2, 2012, reference 01, is reversed. The claimant was not discharged for a current act or any misconduct on October 12, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css