

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NATASHA K COVINGTON
Claimant

APPEAL NO. 10A-UI-15809-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SYSTEMS UNLIMITED INC
Employer

OC: 09/05/10
Claimant: Respondent (1-R)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Systems Unlimited (employer) appealed a representative's November 10, 2010 decision (reference 02) that concluded Natasha Covington (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 28, 2010. The claimant participated personally. The employer participated by Mona Dowiat, Assistant Director of Support Services. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 August 9, 2008, as a full-time counselor. The employer terminated the claimant on September 10, 2010. Later, the employer discovered that the reason for termination did not exist and reinstated the claimant on October 1, 2010. The employer paid the claimant wages for the period of time she did not work.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. The administrative law judge concludes she was not.

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). The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

The issue of the overpayment of insurance benefits is remanded for determination.

DECISION:

The representative's November 10, 2010 decision (reference 02) is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed. The issue of the overpayment of insurance benefits is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw