

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

SANDRA V ORTHEL
2115 J ST # 4
IOWA CITY IA 52240

HARGRAVE-MCELENEY INC
HWY 1 WEST
PO BOX 2210
IOWA CITY IA 52240

Appeal Number: 04A-UI-09951-AT
OC: 08/15/04 R: 03
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2a – Discharge

STATEMENT OF THE CASE:

Sandra V. Orthel filed a timely appeal from an unemployment insurance decision dated August 15, 2004, reference 01, which disqualified her for benefits upon the finding that she had voluntarily left employment on August 3, 2004 without good cause attributable to the employer. After due notice was issued, a telephone hearing was held on October 4, 2004 with Ms. Orthel participating. Although the employer had provided the name and telephone number of a witness, the phone number was answered by a recording. The administrative law judge left a message for the witness to contact the Appeals Section if he wished to participate. There was not further contact. Claimant Exhibit A was admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Sandra V. Orthel was employed as a sales person by Hargrave-McEleney, Inc. from May 2004 until she was discharged by Owner Anne Hargrave on August 3, 2004. She discharged Ms. Orthel because she felt that the employer could not leave Ms. Orthel's position vacant until she was able to return to work from a medical condition on August 16, 2004.

REASONING AND CONCLUSIONS OF LAW:

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

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer's letter of discharge is Exhibit A in this record. It establishes that the claimant's health was the sole reason for the discharge. This does not constitute misconduct. Benefits are allowed.

DECISION:

The unemployment insurance decision dated August 15, 2004, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

kjf/kjf