

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAROLE S ANDERSON
Claimant

APPEAL NO: 09A-UI-09044-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 05/17/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

Carole Anderson filed a timely appeal from a representative's decision dated June 15, 2009, reference 01, which denied benefits based upon her separation from Care Initiatives. After due notice, a telephone conference hearing was scheduled for and held on July 10, 2009. The claimant participated personally. The employer participated by Mr. Josh Burrows, Hearing Representative and witnesses Diane Hill and Rhonda Enterline. Exhibits One through Seven and Ten through Eleven were offered into evidence but not received. Exhibits Eight and Nine were withdrawn.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: The claimant was employed by Care Initiatives from December 6, 2006 until May 19, 2009. The claimant was employed as a full-time cook and was paid by the hour. Her immediate supervisor was Rhonda Enterline.

The claimant was discharged based upon a number of incidences in which Ms. Anderson did not follow work directives that had been issued to her. During the course of her employment the claimant had received numerous warnings from the employer for failing to follow work directives. Ms. Anderson had not followed the menus or substitute menus, had refused milk to a resident, changed lunch meals without authorization and violated instructions regarding keeping kitchen areas shut. Prior to being discharged the claimant had been suspended from work.

The final decision was made to terminate Ms. Anderson from her employment when she violated an in-service directive that had been given to kitchen staff not to provide cookies left over from the in-staff meeting to staff members but to serve them as treats for residents. Based upon the claimant's repeated failure to follow work directives after being warned, a decision was made to terminate Ms. Anderson from her employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record 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 evidence in the record establishes that Ms. Anderson had been warned repeatedly by the employer for failure to follow reasonable work-related directives that had been given to her. The claimant had demonstrated the abilities to follow work directives and had improved performance after being warned. The claimant, however, reverted to a pattern of failing to follow directives that had been given to her and was discharged from her employment. The final incident that resulted in the claimant's termination from employment took place when the claimant failed to follow a specific directive that had been given to kitchen staff members in an in-service meeting regarding providing remaining treats to residents rather than staff members. The claimant chose to violate the directive and was discharged.

Although the administrative law judge is aware that the claimant maintains that she had good reason for each violation, the evidence establishes that the directives were given to the claimant, she was aware of them and failed to follow them. Benefits are withheld.

DECISION:

The representative's decision dated June 15, 2009, reference 01, is affirmed. The claimant is disqualified. Benefits are withheld until she had earned ten times her weekly benefit amount in insured work, providing that she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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