

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ELIZABETH A KOHLER**

Claimant

**APPEAL NO. 13A-UI-07863-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REMEDY INTELLIGENT STAFFING INC**

Employer

**OC: 06/19/11**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Remedy Intelligent Staffing, Inc. filed a timely appeal from a representative's decision dated June 28, 2013, reference 05, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on August 12, 2013. Although duly notified, the claimant did not participate. The employer participated by Ms. April Adams, Recruiter.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

Elizabeth Kohler was employed by Remedy Intelligent Staffing, Inc. from March 25, 2013 until May 15, 2013 when she was discharged from employment. Ms. Kohler was assigned to work at the Media Com Company as a data entry worker and was being paid by the hour. Her immediate contact person at Remedy Intelligent Staffing, Inc. was Ms. April Adams.

The claimant was discharged on May 15, 2013 based upon the conclusion that Ms. Kohler may have provided a false statement for her request to leave early on May 15, 2013.

On May 15, 2013, Ms. Kohler had initially asked to leave early because she wished to take a grandchild to a school event. Subsequently, Ms. Kohler informed a second supervisor that a car accident had taken place involving her grandchildren and she needed to go to the hospital. Because the claimant had provided two different explanations to two different supervisors, the Media Com employer believed Ms. Kohler may have been untruthful about the real reason for wanting to leave early. The matter was placed in the hands of Remedy Intelligent Staffing, Inc. to investigate and make a decision.

Ms. Kohler was asked to provide information about the excuses that she had provided that day and provided an e:mail from a third party stating in effect that the sender had erroneously provided information to Ms. Kohler about her grandchildren being in an automobile accident.

Claimant was unable to provide any further explanation as incoming messages on her cellphone had been deleted. During the course of her employment, the claimant had called in sick on one occasion and left early once and had arrived at work late on one occasion. Because Remedy Intelligent Staffing, Inc. could not verify to its client that the claimant had been truthful in her explanation as to why she wanted to leave early, the client requested that Ms. Kohler not be returned to the Media Com employer and Ms. Kohler was discharged from employment.

### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. 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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Conduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. See 871 IAC 24.32(4).

The evidence in the record establishes that the claimant had not been excessively absent for unexcused reasons or that the claimant had been warned about her attendance prior to being discharged. The employer's concern was that the claimant had appeared to provide conflicting statements about her reasons for leaving early on May 15, 2013. Ms. Kohler had initially indicated that she wanted to leave early to take a grandchild to a school function but later told a different supervisor that there had been a family emergency concerning her grandchildren. The employer was unaware as to whether the claimant was providing false information or whether two different reasons for leaving early had taken place that day. Although the claimant provided an e:mail from a third party indicating that the claimant had been mistakenly advised of an emergency situation concerning her grandchildren, the employer did not consider the excuse to be sufficient and made a management decision to terminate Ms. Kohler.

While the decision to terminate the claimant may have been a sound decision from a management viewpoint, the evidence in the record is insufficient to establish intentional, disqualifying misconduct on the part of the claimant.

**DECISION:**

The representative's decision dated June 28, 2013, reference 05, is affirmed. The claimant was dismissed from work under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

---

Terence P. Nice  
Administrative Law Judge

---

Decision Dated and Mailed

pjs/pjs