

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMBER R SHINNERS
Claimant

APPEAL NO: 11A-UI-08819-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

BAYSIDE INVESTMENT CORP
BAYSIDE TAN
Employer

OC: 05/29/11
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant appealed a department decision dated June 22, 2011, reference 01, that held she was discharged for misconduct on May 17, 2011, and benefits are denied. A telephone hearing was held on August 30, 2011. The claimant participated. Jana Steil, Owner, participated for the employer.

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 as a full-time customer service/sales worker on May 15, 2009, and last worked for the employer as an assistant manager on May 17, 2011. Claimant did sign for the receipt of the dress code policy.

The employer discharged claimant on May 17 for unsatisfactory job performance due to lack of sales. The employer stated in this hearing that violation of dress code was a consideration. The employer never issued any written warning for job performance issues or dress code violations, and it could not offer dates as to when claimant was verbally warned.

During the last two months of claimant's employment, the employer was losing money due to a decline in sales. The employer attributed the business loss due to a lack of claimant sales. The employer did not establish a sales quota for claimant or meaningful standard to measure her performance. The employer could not recall an occasion where it sent the claimant home because her dress violated the employer policy.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 May 17, 2011.

The failure of the employer to issue claimant any written warning or documented verbal warning for unsatisfactory job performance and/or dress code violations means it did not establish the required standard of behavior, such that any further short-coming, would result in employment termination.

Measuring claimant's sales performance against other employees is not an accurate test as to whether claimant is trying to meet some job performance standard. There were sales contests to motivate job performance but no sales quota to measure whether claimant was meeting a minimum standard of performance. It also appears the employer was permissive when it came to enforcing the dress code to the point job disqualifying misconduct is not established for any of the employer reasons for discharge.

DECISION:

The department decision dated June 22, 2011, reference 01, is reversed. The claimant was not discharged for misconduct on May 17, 2011. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs