

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUTH E PHELPS

Claimant

APPEAL NO. 07A-UI-02637-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA

Employer

**OC: 01-28-07 R: 03
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 5, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 2, 2007. The claimant did participate. The employer did participate through (representative) David Bergeon, Human Resources Specialist, Lori Berger, Human Resources Manager for the Iowa Memorial Union and Melissa Errthum, Food Service Supervisor. Employer's Exhibit One was received.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a food service coordinator/closer part-time beginning January 9, 2004 through January 16, 2007 when she was discharged.

On January 12, 2007, the claimant left the security gate up and unlocked. The claimant had been previously disciplined for the same conduct, that is leaving the doors unlocked and or the gate up. By leaving the gate up the claimant put the product in jeopardy of being stolen as well as the equipment and furnishings in the cafeteria. The gate is also used to prevent unauthorized persons from entering the cafeteria and damaging the equipment or product. In order to determine whether the gate is closed the employee need only look as the gate is clearly visible from the exit door. The claimant knew how to check to insure that the gate was down as she had done it many many times before. The claimant was last warned in December 2006 about leaving one of the doors unlocked. The claimant does not remember leaving the gate up on the evening of January 12, 2007. The claimant had been disciplined with suspensions on two other occasions for not properly securing the area.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 claimant knew she was to insure that the doors were locked and the gate was down. She had been warned and disciplined for failing to do so twice in the previous year. The claimant was obligated to insure that the employer's safety measures were followed. She had only to look as she walked out the door to insure that the gate was down. Because she had been warned before and this was not the first occasion this had occurred, the administrative law judge cannot find this an isolated instance. Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). Her continuing failure to lock the gate or door constitutes misconduct sufficient to disqualify her from receiving unemployment insurance benefits.

DECISION:

The March 5, 2007, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount,

provided she is otherwise eligible. Inasmuch as no benefits were claimed or paid, no overpayment applies.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css