

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLIE L DROESSLER
Claimant

APPEAL NO. 15A-UI-13073-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THEISENS INC
Employer

OC: 06/28/15
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Kellie Droessler (claimant) appealed a representative's November 18, 2015 (reference 08) decision that concluded she was not eligible to receive unemployment insurance benefits because she was unable to work with Theisen's (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 15, 2015. The claimant participated personally. The employer participated by Joe Connelly, Soft Lines Manager, and Heidi Bergfeld, Human Resources Assistant.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant had shoulder surgery on August 27, 2015. Her physician placed her on a five-pound weight restriction on her left side. At her interview with the employer on October 1, 2015, the claimant told the employer she was on restrictions but did not specify what the restrictions were. As a condition of her employment, the claimant understood she had to be able to lift fifty pounds. She said she expected to be released from those work restrictions when she reported for work.

The claimant reported to work on October 13, 2015. She had her physician restrictions with her in her back pocket for several days but did not provide those to the employer until October 18, 2015. The doctor's note was dated October 13, 2015 and gave her a weight restriction of five pounds. The claimant called in sick on October 20, 2015. On October 21, 2015, the employer told the claimant she could not work until she had a full release from her physician because the employer was concerned about her safety.

The employer called and left the claimant a voice message on November 2, 2015; reiterating that the claimant could not work until she had a full release from her physician. On November 3, 2015, the claimant sent the employer an e-mail stating her situation had not changed. The employer responded that it would consider the claimant to have quit but she was welcome to reapply as soon as she was released to return to work without restrictions.

On December 11, 2015, the claimant's physician released her to return to work with the restriction of no overhead lifting.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv., 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. She intentionally withheld information from the employer

at the time she was hired on October 1, 2015 and on her first days of work. She did not indicate on any of these days she had a five-pound weight restriction. She misrepresented her condition and put the employer at risk. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

DECISION:

The representative's November 18, 2015 (reference 10) decision is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

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