

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTA L BURGETT
Claimant

MOSAIC
Employer

APPEAL NO: 10A-UI-13632-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/02/10
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 September 28, 2010, reference 02, that held she voluntarily quit without good cause on September 7, 2010, and benefits are denied. A telephone hearing was held on November 2, 2010. The claimant participated. The employer did not participate.

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 witness, and having considered the evidence in the record, finds: The claimant began employment as a full-time direct support associate on June 7, 2010, and last worked for the employer on September 2. The claimant had an issue with work, and she communicated with the employer about it by a series of text messages to which the employer responded. The final employer text messaging to claimant was this was not an appropriate manner to handle the issue, and she would be contacted by HR on the following day.

When the claimant did not hear from HR on September 3, she called and left a voicemail message asking whether she should report for work that day. The claimant received no response. The claimant made the same inquiry for September 6, but she received no response.

The employer mailed claimant a letter dated September 7 terminating claimant's employment for being a two-day, no-call/no-show to work.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes the employer has failed to establish claimant was discharged for misconduct in connection with employment on September 7, 2010.

The claimant offered documentary evidence to show she did call in to the employer and left voicemail messages about whether to report to work on September 3 and 6. Since the claimant was not a no-call to work and she had good reasons for not reporting to work (waiting for HR to contact her), she committed no act of misconduct.

DECISION:

The department decision dated September 28, 2010, reference 02, is reversed. The claimant was not discharged for misconduct on September 7, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css