

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

LYNNETTE D THORNTON
Claimant

APPEAL NO. 18A-UI-02669-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**HEARTLAND EMPLOYMENT
SERVICES LLC**
Employer

**OC: 01/21/18
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Lynnette Thornton (claimant) appealed a representative's February 23, 2018, decision (reference 03) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Heartland Employment Services (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 26, 2018. The claimant participated personally and through Justin Paulsen, Job Developer. The employer participated by Crystal Ward, Human Resources Director. The employer offered and Exhibit 1 was received into evidence.

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 was hired on May 10, 2017, as a part-time dietary aid. She signed for receipt of the employer's handbook on May 10, 2017. The employer performed a human resources audit and discovered the claimant and some other employees did not have a certificate in their files for having completed a mandatory training for Mandatory Adult Abuse Reporting. This training was required by Iowa law and employees must be recertified every five years. The training is performed during work hours, at the facility, and lasts two hours.

The employer notified the claimant she would be taking the training on December 10, 2017. The claimant did not want to take the training because she was certified in May 2017, when she was first hired and thought the employer lost the certificate. The employer was unaware of why the claimant was upset about taking the training.

At the training on December 10, 2017, the claimant did not answer questions or participate. Ms. Ward told the claimant she had to participate in the training in order to continue working for the employer. The claimant responded, "I don't care". The claimant gathered her belongings, left the training, and went to the lobby. Ms. Ward followed her to the lobby. The regional human resources manager saw the claimant in the lobby and asked her what her concerns

were. The claimant did not respond. The employer suspended the claimant from performing regular work until she appeared at work and performed her training.

The employer did not see or hear from the claimant for about two months. In February 2017, the employer sent the claimant a letter saying it assumed the claimant had quit work. On February 15, 2018, the claimant received the letter and wanted an exit interview. The claimant went to the workplace but Ms. Ward was not there.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right

by repeatedly failing to follow the employer's instructions. In this case, the employer gave the claimant about two months to follow their instructions. The claimant did not appear and take the training. Taking the training twice would not have caused the claimant any hardship. She would have been paid for her time. The employer had a legitimate reason for its request. The law required a certificate of completion in the claimant's file. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's February 23, 2018, decision (reference 03) 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

bas/rvs