

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANET E BOYER
Claimant

APPEAL NO. 13A-UI-00107-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GREAT RIVER MEDICAL CENTER
Employer

OC: 11/25/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Janet Boyer (claimant) appealed a representative's December 28, 2012 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Great River Medical Center (employer) for excessive absences from her work area without having the proper authorization. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 5, 2013. The claimant participated personally. The employer participated by Laura Bailey, Human Resources Generalist; Rob Hobbs, Laundry Supervisor; and Jacob Schnedler, Assistant Manager.

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 December 18, 1985, and at the end of her employment she was working as a full-time pre-pack laundry worker. The claimant signed for receipt of the employer's handbook on December 19, 1985. During her last year of employment the employer issued the claimant three written warnings. On March 13, 2012, the employer issued the claimant a written warning for failure to follow the employer's processes. On March 23, 2012, the employer issued the claimant a written warning for attendance. On September 27, 2012, the employer issued the claimant a written warning for leaving her work area without authorization. The employer notified the claimant with each warning that further infractions could result in termination from employment.

On November 12, 2012, the claimant was in her work area for only five minutes out of every thirty minutes she was supposed to work. The supervisor and assistant manager sat down with the claimant and issued the claimant a verbal warning stating that if she did not stay in her area and work she would be terminated. After the warning the claimant improved. On November 13, 2012, the claimant forgot to perform one of the processes on her list.

On November 14, 2012, the claimant arrived at work and was out of her work area three times within the first thirty minutes. The supervisor saw her chatting with co-workers during the first instance. When the claimant caught sight of the supervisor, she returned to her work area. The second instance the supervisor could not find the claimant. She may have been getting supplies or in the bathroom. The third time the claimant was outside her work area dancing using the employer's towels as props. The employer contacted human resources about the claimant's behavior and terminated her later that day.

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:

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 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. She failed to follow instructions about staying in her work area and completing all the processes required in her job. 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 December 28, 2012 decision (reference 01) 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/css