

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALLISON L KETELSEN
Claimant

APPEAL NO. 11A-UI-02482-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS
Employer

OC: 12/20/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Allison Ketelsen (claimant) appealed a representative's February 21, 2011 decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with West Liberty Foods (employer) for dishonesty in connection with her work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 29, 2011. The claimant participated personally. The employer participated by Nikki Bruno, Human Resource Generalist; Sarah Schneider, and Human Resource Generalist. The employer offered and Exhibit One 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 July 7, 2010, as a full-time general laborer. The claimant signed for receipt of the employer's handbook on July 7, 2010. The employer did not issue the claimant any warnings during her employment.

The claimant was absent from work on October 13, 14, and 15, 2010. On October 14, 2010, the claimant went to The University of Iowa College of Dentistry and was seen at approximately 1:30 p.m. On October 26, 2010, the claimant provided a doctor's excuse to the employer from The University of Iowa College of Dentistry indicating that the claimant was seen on October 14, 2010. The note was in dark ink over lighter ink. In a blank area of the paper the words "Please excuse Allison for 10/13/10 – 10/15/10" were written.

The employer was suspicious of the note and on October 29, 2010, sent a copy of the note by fax to The University of Iowa College of Dentistry. The employer asked for confirmation that the information on the excuse was correct. The student dentist was not available until November 2, 2010. On November 3, 2010, a representative from The University of Iowa College of Dentistry sent a letter to the employer indicating that the claimant requested an excuse for three days but

the policy is to issue an excuse only for the hours of the exam on the day of the visit. The claimant was informed by the student dentist that her request was denied.

The employer met with the claimant on November 9, 2010. The claimant admitted changing the note because she needed the days off. The employer terminated the claimant.

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.

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). 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 changed her doctor's note for her own purposes. 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.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the employer's testimony to be more credible. The employer offered two eye witnesses to the claimant's admission of fault.

DECISION:

The representative's February 21, 2011 decision (reference 02) 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/pjs