

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMANTHA J EDWARDS
Claimant

APPEAL NO. 10A-UI-06576-S2

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HOSPITAL
Employer

**Original Claim: 03/28/10
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Samantha Edwards (claimant) appealed a representative's April 21, 2010 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Mercy Hospital (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for July 13, 2010, in Cedar Rapids, Iowa. The claimant participated personally and through her mother, Cheryl Edwards. The employer was represented by Nancy Wood, Attorney at Law, and participated by Sheryl Knutson, Employee Relations Coordinator for Human Resources; Ashley Mills, Former Access Services Supervisor; Bernie Brandenburg, Risk Management Coordinator; and Kathy Hotz, Emergency Care Unit Nurse Manager. 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 having considered all of the evidence in the record, finds that: The claimant was hired on July 14, 2008, as a part-time access services representative. The claimant signed for receipt of the employer's handbook. The employer issued the claimant written warnings on July 7, October 15, and November 13, 2009, for failure to follow instructions in the performance of her work.

The employer told employees not to eat at the desks or in work areas. On March 5, 2010, the employer sent an e-mail to the claimant and her co-workers prohibiting eating at desks or in work areas. On March 11, 2010, the claimant and her mother were working at the desk. Away from the work area, the two kept a pizza the mother had ordered. In what little break time was allowed, the claimant and her mother left the work area and went behind a partition to have a bite of pizza. The claimant and her mother understood that this was allowed. Later, an employee told the employer that the claimant was eating in her work area and dressed inappropriately. On March 17, 2010, the employer terminated the claimant.

The claimant did not know in what way she was dressed inappropriately. She wore the same clothing to the hearing on July 13, 2010. The employer did not know what was inappropriate about her attire.

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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The e-mail of March 5, 2010, did not seem to apply to the situation that occurred on March 11, 2010. The employer could not find anything inappropriate in the claimant's attire. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's April 21, 2010 decision (reference 01) is reversed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw