

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TYRA N WEDDINGTON
Claimant

APPEAL NO. 13A-UI-01210-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LANCE PRIVATE BRANDS LLC
Employer

OC: 12/23/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated January 28, 2013, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on March 19, 2013. Claimant participated. The employer participated by Ms. Stephanie Zimmerman, Human Resource Generalist. Employer's Exhibits One and Two were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Tyra Weddington was employed by Lance Private Brands LLC from August 9, 2011 until December 28, 2012 when she was discharged from employment. Ms. Weddington last worked as a full-time sanitation department worker and was paid by the hour. Her immediate supervisor was Bruce Crail.

Ms. Weddington was discharged on December 28, 2012 when the employer reasonably concluded that Ms. Weddington had left her work area without authorization for over two and one-half hours on December 21, 2012.

On that night the employer made extensive efforts to reach Ms. Weddington but was unable to find her from 8:00 p.m. until 10:30 p.m. that night. Ms. Weddington was required to wear a company radio, however, the claimant did not respond to 11 calls to her within the two and one-half hour period. Employees reported seeing Ms. Weddington taking a cup of coffee and leaving the facility at approximately 8:00 p.m. The employee who was in the area where Ms. Weddington was scheduled to work verified to the company that Ms. Weddington was not present during the period of time in question and the lead person stated to the company that Ms. Weddington had left the premises. Because the claimant was on final warning for a similar incident that had taken place when the claimant had taken a 41-minute unauthorized break in November 2012, a decision was made to terminate Ms. Weddington from her employment.

It is the claimant's position that she was "sick." She was in and out of the restroom for two and one-half hours. It is the claimant's further position that a lead person observed her there and knew that she was sick.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In this matter the employer acted reasonably in attempting to reach the claimant via radio and personally looking for the claimant for a two and one-half hour period on the night of December 21, 2012. Although the employer had attempted to reach the claimant on 11 occasions during the two and one-half hour period by radio, Ms. Weddington was not responsive to the radio calls. A lead person reported to the company that she had seen

Ms. Weddington leaving the facility with a cup of coffee at approximately 8:00 p.m. that night. An employee who was in the compactor area where Ms. Weddington was scheduled to work verified to the company that Ms. Weddington was not present in the job location where she was scheduled to work. The claimant supplied no medical documentation supporting her need to be away from work that day or verifying that the claimant was unable to work due to illness.

Although the administrative law judge is aware of the claimant's position that she was sick and in and out of the restroom and that her time away from work was necessary due to illness, the administrative law judge concludes that the claimant's testimony strains credibility. At the time of discharge the claimant was on a final warning for similar conduct. The administrative law judge concludes that the employer has sustained its burden of proof in showing that the claimant's discharge took place due to willful and intentional misconduct on the part of the claimant. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated January 28, 2013, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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