

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TENIA MCCLENDON
Claimant

APPEAL NO. 11A-UI-10262-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES
Employer

OC:07/03/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated July 26, 2011, reference 02, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 29, 2011. The claimant participated. The employer participated by Becky Snyder, on site manager. The record consists of the testimony of Becky Snyder; the testimony of Tenia McClendon; Claimant's Exhibits A through C; and Employer's Exhibits 1 through 6.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a temporary staffing agency. One of the employer's clients is Winegard, which manufactures satellite dishes. The claimant worked for the temporary employment agency that had the contract with Winegard prior to this employer and then became an employee for this employer on June 21, 2010. The claimant was a production worker. Her last day of work was July 5, 2011. She was terminated on July 5, 2011, for refusing to do a particular job that she was asked to perform.

Approximately one week prior to the claimant's termination, she noticed that her wrists were swollen. She told employees of Winegard about her condition. She did not inform Becky Snyder, who was the onsite manager for the employer. The claimant was not told that she should see a doctor. The claimant assumed that the information would get passed on to Ms. Snyder. The claimant did not seek medical attention, although the pain persisted. She also had pain in her arm and shoulder, which she attributed to using new muscles. She was more concerned about her swollen wrists.

The claimant did production work and was given assistance by other employees. On July 5, 2011, she was asked to do a job that required her to lift the dishes, which weighed about three

pounds, and hang them on a printer. The claimant did not feel that she was physically capable of performing the job and refused to do the job three times. She was terminated by Ms. Snyder for refusing to perform the job.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Insubordination, which is the continued failure to follow reasonable instructions, constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990)

Failure to perform a specific task does not constitute misconduct if the failure is in good faith or for good cause. See Woods v. IDJS, 327 N.W.2d 768 (Iowa App. 1982)

The evidence in this case established that the claimant did indeed refuse to perform a specific job. She was asked to do a job that required her to lift three-pound satellite dishes and put them on a printer. The claimant testified that she did not feel that she could physically perform the job because she had pain in her wrists that had caused her wrists to swell. She testified that she had informed Winegard supervisors about her condition. She did not, however, inform her actual employer about her physical problem.

The claimant's refusal to perform a job that was asked to do can constitute insubordination, which is a form of misconduct. However, if the claimant's failure to perform the job is in good faith or for good cause, there is no misconduct. In this case, the administrative law judge concludes that the claimant's refusal to perform a particular job was in good faith. She had physical problems with her wrists. She did not do a very good job of communicating her physical problems to her actual employer or why she could not do the job. Had she actually reported her difficulties to Ms. Snyder, and been referred to a physician for evaluation, the outcome might have been different. Nevertheless, the administrative law judge concludes that the claimant reasonably believed she had reported her injury and that she was incapable physically of performing the job. There is insufficient evidence of misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The representative's decision dated July 26, 2011, reference 02, is affirmed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw