

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRACEY E FARLIN
Claimant

LISLE CORPORATION
Employer

APPEAL NO: 12A-UI-04951-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/01/12
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant appealed a department decision dated April 24, 2012, reference 01, that held he was discharged for misconduct on April 5, 2012, and benefits are denied. A telephone hearing was held on June 11, 2012. The claimant, and witness, Michael Shipull, participated. Bob Webb, HR Manager, and Roger Poore, Supervisor, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment as a full-time custodian on April 21, 2008, and last worked for the employer on April 5, 2012. The claimant knew the employer had a smoking policy that limited it to outdoors and on break-time.

Claimant's supervisor caught her smoking in a company building on April 4 and reported it to human resources. Claimant had been issued a written warning for attendance based on absenteeism. Claimant had provided the employer with doctor excuses to cover her absences in order to be paid for time off pursuant to a union contract (CBA). Although claimant's supervisor had some issues with claimant showing up for work and getting her work done, there was no written warning issued.

The employer discharged claimant for violating the smoking policy and in consideration of her absenteeism as it affected her job performance. A co-worker who was with her and smoking on April 4 suffered a pay reduction discipline.

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(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The administrative law judge concludes the employer has failed to establish claimant was discharged for misconduct in connection with employment on April 5, 2012.

Although claimant knew the employer smoking policy and violated it on April 4, she was not discharged just for this reason. Since the employer considered claimant's properly reported absences due to documented illness as a moving reason for discharge, job disqualifying misconduct is not established. The smoking policy violation was not sufficient to dismiss a co-worker that establishes the absenteeism was an important consideration. Since the absenteeism was for excusable reasons (though excessive), it is not misconduct. An isolated incident of misconduct is not sufficient to deny benefits.

DECISION:

The department decision dated April 24, 2012, reference 01, is reversed. The claimant was not discharged for misconduct on April 5, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs