

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY L DUTCHER
Claimant

APPEAL NO. 08A-UI-00338-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AADG INC
Employer

**OC: 12/16/07 R: 02
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated January 8, 2008, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on January 28, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Rustin Davenport, Attorney at Law. Dan McGuire participated in the hearing on behalf of the employer with witnesses, Mark Evers and Jay Hain. Exhibit A was admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a purchasing clerk from September 16, 2005, to December 17, 2007. The claimant was informed and understood that under the employer's work rules, employees were subject to discipline up to termination of their employment for dishonesty, including theft, lying, and falsifying company documents.

On November 6, 2007, the claimant contacted her supervisor and requested vacation time off stating she had a dentist appointment at 1:00 p.m. on Friday, November 9. The vacation time was granted. She did not have a dentist appointment when she requested the vacation but thought stating she had a dental appointment would make it more likely the vacation time would be approved.

The dentist's office is actually closed on Fridays, and the claimant would have known that. An employee reported that she had observed the claimant at a shopping mall during the time period she had requested to be off for the dentist appointment.

As a result of this employee report, the claimant's supervisor, Jay Hain, asked her for a note from the dentist confirming that she had an appointment. Initially, she ignored Hain's request. Then on December 10, 2007, the claimant visited the dentist office. She asked the dental assistant for a note confirming her visit that day. The dental assistant prepared a note

confirming the fact that the claimant had an appointment on "12/10/07." The claimant altered the note to read, "11/9/07." She photocopied the note and submitted it to Hain. Hain became suspicious of the photocopied note. The dentist's office was contacted. The dental assistant said that dentist's office was not open on Fridays, and no note was given to the claimant to confirm that she had been at the office on November 9, 2007.

On December 17, 2007, Hain and the employee relations manager, Dan McGuire, confronted the claimant about the note and asked her what date the note was for. The claimant replied, November 9. When the McGuire told her that it was not possible because the office was closed, the claimant admitted that the note was untrue. The claimant was then suspended on December 17 and discharged on December 18, 2007, for submitting a false dental excuse.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant's credibility is undercut by her own testimony in which she asserts that she asked the dental assistant to provide her with a

statement that she was at the office on November 9 and that the dental assistant must not have checked the calendar and wrote the statement as November 9. The claimant knew when she asked that the office was closed on November 9. An honest person does not ask someone to prepare a dishonest statement and submit it as if were truthful. The preponderance of the evidence establishes that the claimant submitted an altered dental excuse. It is implausible that she would arrange to take time off to stop at an office unannounced to see the dentist or to make an appointment to see the dentist. She never explains why she did not call the dentist to get an appointment, which is the normal way such appointments are made. The claimant was not discharged for taking vacation, but instead it was for her dishonesty in covering up the fact that she was using a reason for taking time off that was knowingly untrue.

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated January 8, 2008, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css