

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUTH M CARSON
Claimant

APPEAL NO: 12A-UI-11954-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARK COURTER STATE FARM INS
Employer

**OC: 08/09/12
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

The employer appealed a department decision dated September 24, 2012, reference 02, that held the claimant was not discharged for misconduct on August 24, 2012, and benefits are allowed. A telephone hearing was held on October 30, 2012. The claimant participated. Mark Courter, Owner, and Mary King, Office Manager, participated for the employer. Employer Exhibit One was received as evidence.

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 on July 10, 2010, and last worked for the employer as a full-time CSR on August 24, 2012. She was a licensed insurance agent and had worked with State Farm for more than 25-years. State Farm monitors the agency clients regarding payments/deposits and it has other requirements regarding policy applications with payment submission. The claimant, Office Manager King and the owner/agent were the three employees who worked in the agency.

The employer issued claimant a written warning notice in a July 19, 2012 performance review. Claimant was put on a 30-day probation with an admonition she could be terminated unless her performance improved. The employer cited claimant for failing to properly document customer/client transactions or communications, work performance errors on policy applications, failing to collect client money when submitting policy applications and altered bank deposits.

The employer discharged claimant on August 24 when it perceived her work performance continued to decline in contravention to the July 19 warning. The employer concluded claimant was unhappy at the workplace to the point she was refusing to follow office policy. Claimant

explained how she had put notes with the bank deposits to explain any discrepancy and she tried to document with notes her client transactions/conversations. She offers there was nothing she could do to make the employer happy with her job performance after the review that could have saved her 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.

The administrative law judge concludes the employer has failed to establish that claimant was discharged for a current act of misconduct in connection with employment on August 24, 2012. Since the employer discovered some claimant personal use of computer after discharge, this matter was not considered.

The employer was examined about specifics as to why claimant failed to satisfy her 30-probation after the performance review warning on July 19. The employer did not establish any glaring work performing deficiency as to a certain event and date that constitutes job disqualifying misconduct. While it is apparent the employer no longer wanted claimant as an employee, misconduct is not established. Claimant's conclusion she could not satisfy the employer during the probation is supported by no work performance review for two years and discharge one-month thereafter.

DECISION:

The department decision dated September 24, 2012, reference 02, is affirmed. The claimant was not discharged for a current act of misconduct on August 24, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs