

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICIA K BROWN
Claimant

APPEAL NO. 11A-UI-00508-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EASTERN STAR MASONIC HOME
Employer

OC: 12-05-10
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 10, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 23, 2011. The claimant did participate. The employer did participate through (representative) Sherri Amendola, housekeeping and laundry supervisor; Melissa Barrett, laundress; and Amy Price, activity director.

ISSUE:

Was the claimant discharged due to job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a housekeeper, part-time, beginning October 13, 2010, through December 6, 2010, when she was discharged. On December 2 Ms. Amendola told the claimant to go to a particular resident's room and to retrieve the resident's slacks so that they could be laundered. Ms. Barrett was present when the conversation took place between the claimant and Ms. Amendola. At no time during that conversation did Ms. Amendola ever tell the claimant that she was to "sniff the crotch" of the resident's slacks. The claimant went and retrieved the slacks and brought them to the laundry room where they were laundered and returned to the resident.

On December 3 the claimant told Amy Price, the activities coordinator, who has no connection to the laundry, that Ms. Amendola had instructed her to sniff the crotch of a resident's slacks. Ms. Price told the claimant that she should report that to the administrator. The claimant refused to make the report to the administrator. Ms. Price eventually related to the home administrator what the claimant had alleged. Ms. Amendola confirmed to the administrator that she had never nor would she ever require employees to sniff the crotches of any resident's slacks, as that would be very offensive to the resident and a violation of their dignity. Ms. Barrett confirmed to the administrator the conversation she overheard between Ms. Amendola and the claimant. When Ms. Amendola learned that the claimant was lying about what she was being required to do in the laundry, the claimant was discharged.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

An employee owes it to their employer to treat them with honesty. Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The administrative law judge is persuaded that the claimant was never told by Ms. Amendola or anyone else that she was required to sniff the crotches of the resident's slacks to see if they needed to be laundered. The claimant did tell Ms. Price a falsehood about what she was being required to perform as part of her duties. Such an action is conduct not in the employer's best interest and, under these circumstances, is sufficient misconduct to disqualify her from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The January 10, 2011 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw