

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**REBEKAH S VANDREY**

Claimant

**APPEAL NO. 10A-UI-01848-N**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GARDEN VIEW CARE CENTER INC**

Employer

**Original Claim: 01/03/10**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Rebekah Vandrey filed a timely appeal from a representative's decision dated January 27, 2010, reference 01, which denied benefits based upon her separation from Garden View Care Center, Inc. After due notice was issued, a hearing was held in Council Bluffs, Iowa, on June 3, 2010. Ms. Vandrey participated personally. Appearing on behalf of the claimant was Mr. Michael J. Tullis, attorney at law at Legal Aid Society, and witness Brian Vandrey, husband. Although duly notified, there were no appearances by or on behalf of the employer.

**ISSUE:**

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all the evidence in the record, the administrative law judge finds: Rebekah Vandrey was employed as a full-time dietary aide/cook for Garden View Care Center from November 26, 2000, until December 24, 2009, when she requested an accommodation regarding the use of a newly implemented employee identification system.

On December 1, 2009, Garden View Care Center came under the new ownership of HMC Corporation. The new owners met with current employees and indicated that few changes would be made in the operation of the facility. The new owners did indicate that a new time management system would be put in place in the future. The employer supplied no details. Approximately two weeks after the meeting, the company's time clock system was removed and employees used a paper system to manually report their arrival and leaving times.

On the evening of December 22, 2009, the claimant was informed by her supervisor that all employees would be required to insert their hands into a "scanner" device the following day and thereafter for time reporting purposes. Ms. Vandrey had serious concerns about the use of the scanner and its religious implications. When she reported for work the next day, December 23, 2009, the claimant was instructed to use the scanning device by the facility's administrator. Ms. Vandrey asked for an accommodation based upon her personal religious convictions. The

request for accommodation was summarily denied and the claimant was told by the administrator, "Tomorrow will be your last day." Ms. Vandrey reported to work on December 24, 2009, was allowed to report her arrival by using the sign-in method and discharged at the end of the workday.

Prior to being discharged on December 24, 2009, the claimant had received no warnings or disciplinary actions related to the sign-in procedure or for any other reason during ten years of employment.

## **REASONING AND CONCLUSIONS OF LAW:**

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W. 2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

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.

An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof in establishing job-related misconduct as the reason for separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as the employer had not previously warned the claimant about the issue leading to the separation, it has not met its burden of proof of establishing that the claimant acted deliberately contrary to the employer's interests and standards of behavior. If the employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written) and reasonable notice must be given. The claimant in this case was discharged when she requested an accommodation to the way in which time reporting would be required. The administrator was aware that Ms. Vandrey might object to the insertion of her hand into the scanning device for religious reasons. The employer was not willing to consider any accommodation that would have allowed time reporting without violating the claimant's religious convictions. The employer did not warn the claimant that she would be discharged if she did not comply. The claimant was simply discharged and told that her employment would end at the conclusion of the next day's work.

Based upon the evidence in the record, the administrative law judge concludes that the claimant's belief was sincerely held. The court in Lambert v. Condor Manufacturing, Inc., 768 F Supp. 600, 601 (E.D. Mich. 1991), 56 Fair Employment Practice Case (BNA) 532 (1991) held that in a case of a work objection based upon sincerely held religious beliefs there is a requirement that the employer show that it could not reasonably accommodate the employee's belief without undue hardship.

Based upon the facts of this case and the application of appropriate law, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing job misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

**DECISION:**

The representative's decision dated January 27, 2010, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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