

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KATIE L KORTH**  
Claimant

**APPEAL NO. 09A-UI-07429-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEARTLAND EMPLOYMENT  
SERVICES LLC**  
Employer

**OC: 04/12/09**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from a representative's decision dated May 7, 2009, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 9, 2009. Claimant participated personally. The employer participated by Mr. Adam Aswegan, Human Resource Director.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: The claimant was employed as a social worker, case administrative assistant, for the captioned employer from August 18, 2008 until April 13, 2009 when a decision was made to terminate the claimant based upon the employer's conclusion the claimant did not meet the employer's job performance expectations. The claimant had been given a final written warning on November 14, 2008 regarding job expectations. A review of the claimant's desk showed incomplete work and a number of required duties had not been performed in a timely manner.

The claimant had been unable to meet the employer's work expectations due to work load and lack of adequate staffing. Ms. Korth had attempted to prioritize her work so as to accomplish the most necessary work first. The claimant was unable to meet the employer's work expectations although she had attempted to perform her duties to the best of her ability.

**REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes sufficient intentional disqualifying conduct on the part of the claimant so as to warrant the denial of unemployment insurance benefits. It does not.

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 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 insurance benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

The evidence in this case establishes that the claimant attempted to perform her duties to the best of her abilities but was unable to reach the employer's performance expectations. The claimant's ability to perform at the level of competence expected by the employer was affected by work load and lack of additional staffing. The claimant attempted to the best of her ability to prioritize her work so that the most necessary work was accomplished first.

The question in this case is not whether the employer has a right to discharge an employee for these reasons but whether the discharge is disqualifying under the provisions of the Employment Security Act. While the decision to terminate Ms. Korth may have been a sound decision from a management viewpoint, intentional disqualifying misconduct has not been established. Benefits are allowed, providing the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated May 7, 2009, reference 01, is affirmed. The claimant was dismissed under non disqualifying conditions. Unemployment insurance benefits are allowed, providing 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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