

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

MARIA L PORTILLO
3708 SE 14TH APT 33
DES MOINES IA 50320

G & K SERVICES COMPANY
C/o FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166

Appeal Number: 04A-UI-12804-JTT
OC: 12/01/04 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant, Maria Portillo, filed a timely appeal from a decision of a representative dated December 1, 2004, reference 01, which held Ms. Portillo was not eligible to receive unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on December 16, 2004. The claimant participated personally, with the assistance of interpreter Rosie Paramo-Ricoy. The employer was represented by Production Supervisor Jacob Smith,

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Portillo was employed as a full-time general laborer at G & K Services from May 31, 2000, until November 10, 2004, when she was discharged by Mr. Smith for repeatedly violating the company's policy regarding the wearing of biohazard safety gear. The employer is a commercial laundry service provider to hospitals and clinics. Ms. Portillo was assigned to work as needed in the several areas of the employer's production plant.

Within the last year, the company began to assign Ms. Portillo to work in an area that sorted soiled laundry received from medical facilities. The material being sorted constituted a biohazard, since it contained blood and other bodily fluids. To comply with the law, the employer required employees working in the area to wear appropriate protective gear. The gear consisted of a blood-resistant gown, rubber gloves, and a safety-mask. Ms. Portillo did not like to wear the safety-mask, because it made breathing difficult and irritated her skin. For these reasons, Ms. Portillo had requested on several occasions that she not be assigned to work in the biohazard area.

The final incident that prompted Mr. Smith to discharge Ms. Portillo occurred on November 10, 2004. On that date, Mr. Smith observed that Ms. Portillo was not wearing her safety-mask. Mr. Smith had previously observed Ms. Portillo working in the biohazard area without wearing the safety mask. On October 25, 2004, Mr. Smith had observed Ms. Portillo without the mask and issued a verbal warning. On November 8, 2004, Mr. Smith again observed Ms. Portillo without the mask and issued a written warning. The final incident leading to termination followed just two days after the written warning.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in this record establishes that Ms. Portillo was discharged for misconduct in connection with her employment.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Because Ms. Portillo was discharged, the employer bears the burden of proving the discharge was for misconduct. See Iowa Code section 96.6(2). Ms. Portillo's repeated failure to wear appropriate safety gear when working in the biohazard area placed her at risk of serious illness. Ms. Portillo's behavior exposed the employer to liability for a possible workers' compensation claim. Ms. Portillo's behavior exposed the employer to being sanctioned for failing to enforce workplace safety. The safety gear Ms. Portillo found objectionable is the same gear worn by every other individual who works in a biohazard area. G & K had every reason to expect and demand that the safety gear be worn. Ms. Portillo had a duty to G & K to follow appropriate safety precautions. Ms. Portillo's failure to wear the gear demonstrated an intentional and substantial disregard of her employer's interests. See 871 IAC 24.32-1-a; See also Henry v. Iowa Department of Job Service, 412 N.W.2d 731 (Iowa App. 1986).

The administrative law judge concludes that the employer has provided sufficient proof that Ms. Portillo was discharged for misconduct in connection with her employment. Ms. Portillo is disqualified from receiving unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount.

DECISION:

The representative's decision dated December 1, 2004, reference 01, is affirmed. Benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

jt/smc