

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELLEN J PIPER
Claimant

APPEAL NO. 12A-EUCU-00143-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARVEST MANAGEMENT SUB LLC
Employer

**OC: 01/02/11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32 – Definition of Misconduct

STATEMENT OF THE CASE:

Harvest Management Sub filed a timely appeal from an unemployment insurance decision dated March 28, 2012, reference 03, that allowed benefits to Ellen J. Piper. After due notice was issued, a telephone hearing was held April 25, 2012 with Ms. Piper participating. Doug Wyant, Manager of Beaverdale Estates, participated for the employer. Sydnee Mobley was listed as a witness but Mr. Wyant did not call her to testify.

ISSUE:

Was the claimant discharged for misconduct in connection with the employment?

FINDINGS OF FACT:

Ellen J. Piper was employed as Enrichment Coordinator at Beaverdale Estates from February 5, 2012 until she was discharged February 22, 2012. Manager Doug Wyant and his wife told Ms. Piper that she was not working out. Ms. Piper's previous employment had been as a software developer. She had never worked in this type of position previously. Her work history was listed on the resumé she submitted. Mr. Wyant believed that Ms. Piper did not understand what her job entailed.

REASONING AND CONCLUSIONS OF LAW:

The question is not whether the employer had a sufficient business reason for discharging Ms. Piper. The question is whether the discharge was for misconduct as that term is defined for unemployment insurance purposes.

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. See Iowa Code section 96.6-2. One who is discharged during a probationary period of employment for being unable to perform the job to the employer's standards is not considered to be discharged for misconduct for unemployment insurance purposes. See 871 IAC 24.32(5). The testimony of Mr. Wyant and Ms. Piper establishes that Ms. Piper was not meeting Mr. Wyant's expectations despite her best efforts. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated March 28, 2012, reference 03, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs