

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

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Appeal Number: 04A-UI-04917-D  
OC: 07/20/03 R: 02  
Claimant: Appellant (2)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge  
Section 96.7-2-a(2) – Charges Against Employer's Account

STATEMENT OF THE CASE:

Jennifer S. Garrison (claimant) appealed a representative's April 19, 2004 decision (reference 09) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Raccoon Valley Humane Society (employer). After hearing notices were mailed to the parties' last-known addresses of record, a hearing was convened by telephone on May 24, 2004. After additional hearing notices were mailed to the parties, the hearing was reconvened and concluded as an in-person hearing on June 8, 2004. The claimant participated in the hearing and was represented by Jamie Bergkamp, Attorney at Law. Roger Owens, Attorney at Law, appeared on the employer's behalf in the June 8 portion

of the hearing; Joseph Punzak and Linda Blakely appeared on both hearing dates and testified on behalf of the employer. During the hearing, Employer's Exhibit One and Claimant's Exhibits A through F were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES: Was the claimant discharged for work-connected misconduct? Is the employer's account subject to charge?

#### FINDINGS OF FACT:

The claimant started working for the employer on October 9, 2003. She worked part time (15 – 35 hours per week) as an animal care technician. Her last day of work was March 29, 2004. The employer determined to discharge her on that date. The reason asserted for the discharge was an incident with regard to an injection given to a dog.

The claimant had been given a warning for attendance on February 8, 2004. On February 18, 2004, she was given a 30-day probation due to "absenteeism and attitude toward authority." On March 26, the claimant administered an injection to a dog in its hip and had restrained it by wrapping it with a towel, both consistent with the manner in which she had been trained. Lameness was later observed in the dog. The employer concluded that the lameness was due to the claimant's giving of the injection of the vaccine in the hip, rather than in some other location. An expert opinion was presented that, while it was not impossible that the claimant's restraint of the dog could have caused the lameness, the administration of the injection itself did not cause the injury, and there was no clear evidence as to how or when the hip damage occurred. (Claimant's Exhibit E.) There is no record of any prior warnings given to the claimant with regard to the manner in which she was to give injections; the employer asserted that, as a result of the claimant's February 18 probation, she was not to administer medication at least without supervision; however, this condition is not contained in the documentation of the probation nor is there any documentation that, even if that was a verbal condition during the probation, the condition did not end at the end of the 30-day period. (Claimant's Exhibit C.)

The incident regarding the dog was reported to Mr. Pundzak, the executive director, on the same date. (Claimant's Exhibit D.) As a result, on March 29, Mr. Pundzak made the decision to discharge the claimant. (Claimant's Exhibit A.) Mr. Pundzak did not have an opportunity to discharge the claimant on March 29 because the claimant reported for her scheduled shift at 8:00 a.m. and she left at 8:30 a.m. due to a migraine headache. She was absent for several days thereafter due to continued headaches, and was so informed of the discharge on April 4.

The claimant established an unemployment insurance benefit year effective July 20, 2003. She most recently filed an additional claim effective March 28, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right to terminate the claimant's employment but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate questions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code Section 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

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).

The focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
  - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
  - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or

2. Carelessness or negligence of such degree of recurrence as to:
  - a. Manifest equal culpability, wrongful intent or evil design; or
  - b. Show an intentional and substantial disregard of:
    1. The employer's interest, or
    2. The employee's duties and obligations to the employer.

Henry, supra. The reason documented by the employer for discharging the claimant is her alleged mishandling of the dog on March 26. (Claimant's Exhibit A.) The employer also cited concerns regarding the claimant's absences after she left work on March 29, but it is clear that those concerns arose subsequent to the decision to discharge the claimant and were not the basis of the employer's decision to discharge the claimant; those concerns cannot now be used to establish misconduct. Larson v. Employment Appeal Board, 474 N.W.2d 570 (Iowa 1991). Further, the administrative law judge would find that the employer has failed to establish that the absences were not due to bona fide, properly reported illness. Under the circumstances of this case, the claimant's conduct with regard to the handling of the dog was, at worst, the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code Section 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code Section 96.19-3. The claimant's base period began April 1, 2002 and ended March 31, 2003. The employer did not employ the claimant during this time, and, therefore, the employer is not currently a base period employer. Its account is not currently chargeable for benefits paid to the claimant.

#### DECISION:

The representative's April 19, 2004 decision (reference 09) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The employer's account is not subject to charge in the current benefit year.

ld/tjc