

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBBIE J FROISETH
Claimant

APPEAL NO. 08A-UI-02599-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOC SERVICES LLC
Employer

**OC: 02-10-08 R: 12
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 6, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 1, 2008. The claimant did participate. The employer did participate through (representative) Olga Randolph, Human Resources Manager and Jill Swope, Revenue audit Supervisor.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as an income auditor full time beginning November 15, 2001 through February 11, 2008 when she was discharged.

The claimant was placed on a performance improvement plan beginning December 28, 2007 through February 8, 2008. The claimant had six criteria she was to meet in order to keep her job. The claimant was placed on the improvement plan in part due to her attendance issues and her job performance. On January 25, 2008 the claimant was given a written warning for her attendance because for her last eight scheduled work days she was late for work. The claimant was to start at 7:00 a.m. On February 5, 2008, she was late by seven minutes as she punched in at 7:07 a.m. On January 28, the claimant was given a corrective warning for failure to send out reports in a timely manner. If the claimant had not been late to work, she still would have been discharged. The claimant failed to meet six expectations set up for her by the employer on December 28, 2007, including a requirement that she not be late to work.

The claimant was to log her start and end times for each task beginning on December 28, 2007. The claimant was to keep a log of when she started when she began and when she ended. The claimant was to keep the log on her calendar on her desk. The claimant failed to provide the start and stop time for each tasks on most days between December 28, 2007 and her discharge. The claimant had the ability to log her start and stop time but chose not to do so.

The claimant was to review current routines for audits assigned. The claimant was also instructed to complete her audits in a timely manner. The claimant did not review the routines because she was not performing the audits correctly.

The claimant was to follow the task list in the audit journal. That claimant did not always meet the expectations for this task as is evidenced by her failure to mark correctly and to complete the task list itself. The claimant admits that she did not always perform the tasks in order.

The claimant was to practice her ten key skills. The claimant did not improve her skills. On January 22 the claimant was asked if she had been practicing and indicated that she had not.

The claimant was to be to work on time everyday, which she was not.

The claimant was to review internal controls, set up in different chapters of the manuals. The claimant was to review different segments which specifically related to the job tasks she was to complete. The claimant admitted that she had not been looking at the internal controls or instructions.

Since Ms. Swope became the claimant's supervisor in June 2007, the claimant never met the job expectations. The claimant could perform the tasks correctly on occasion, but not consistently. The claimant alleges that she did have the ability to perform the job duties and audits correctly.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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 claimant could on occasion perform her job functions correctly, but not consistently. The claimant was given a warning that her failure to improve her job performance including her attendance would lead to her discharge. The performance of the duties was within the claimant's control and she was given specific instructions on how to improve her performance but she chose not to do so. Claimant's repeated failure to adequately and fully perform her job duties after having established the ability to do so is evidence of her willful intent not to do so and is misconduct. Benefits are denied.

DECISION:

The March 6, 2008, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs