

**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**

**DOROTHY A LUEBBERS
305 – 3RD AVE
PARKERSBURG IA 50665-1030**

**BREMER COUNTY AUDITOR
415 E BREMER AVE
WAVERLY IA 50677**

**Appeal Number: 06A-UI-04310-S2T
OC: 03/12/06 R: 03
Claimant: Respondent (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, 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:

Bremer County Auditor (employer) appealed a representative's April 7, 2006 decision (reference 03) that concluded Dorothy Luebbers (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 8, 2006. The claimant participated personally. The employer participated by Judy Stevenson, Human Resources Manager, and Lynn Brase, Bremer County Auditor. The employer offered one exhibit, which was marked for identification as Exhibit One. Exhibit One was received into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 16, 1999, as a full-time deputy of elections. The claimant was belligerent and inconsiderate to the employer throughout her employment. She disregarded instructions repeatedly because she felt she knew what was better for the employer.

On September 8, 2005, the employer issued the claimant a written warning for insubordination and poor attitude. While issuing the warning the claimant raised her voice to the employer. The claimant said she did not believe the employer and would never come to the employer with any problems.

The employer issued the claimant a verbal warning on December 14, 2005, for failing to work her scheduled hours. The claimant arrived at work early due to the weather. The employer warned the claimant she should leave early so the claimant would not accrue hours for which she would have to be compensated at a later time. The claimant disregarded the employer's warning, took a shortened lunch and worked until her regular end time.

On February 10, 2006, the employer found the claimant doing work for a part time job using the employer's computer while at work. The employer had warned the claimant previously to do this work on her own time and not use the employer's space to store information for the other job. The claimant did not see anything wrong with her actions because her home computer was not working.

The claimant was away from work on leave between February 15 and 27, 2006. The employer discovered the claimant had not completed her job tasks and made a number of mistakes. Occupants of one house were registered to vote in more than one precinct, minutes of meetings were not completed and records were not stored in the appropriate places.

On February 28, 2006, the employer terminated the claimant for failure to follow instructions in the performance of her work. The employer allowed the claimant to take vacation and other leave until April 7, 2006, so she could accrue funds for retirement for one more quarter.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes she was.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to conduct themselves in a certain manner. The claimant disregarded the employer's right by being discourteous, belligerent and insubordinate. She ignored the employer's directions and warnings to the detriment of the employer. The claimant's disregard of the employer's interests is misconduct. As such she is not eligible to receive unemployment insurance benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received benefits in the amount of \$1,296.00 since filing her claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's April 7, 2006 decision (reference 03) is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit, amount provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,296.00.

bas/pjs