

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY D DUGGER
Claimant

APPEAL NO. 12A-UI-01317-VS

**HEARTLAND EMPLOYMENT SERVICES
LLC**
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/18/11
Claimant: Appellant (2)**

Section 96.5-2-A – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated February 3, 2012, reference 01, which held that the claimant was not eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on March 13, 2012, in Davenport, Iowa. Claimant participated. The claimant was represented by Liz Smith and Catherin Alexander, Attorney at Law. The employer did not show up for the hearing. The record consists of the testimony of Kimberly Dugger and Claimant's Exhibits A-L.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was a team coordinator for Heartland Hospice, which is owned by the employer. She was hired in June 2009 as a full-time employee. Her last day of work was December 16, 2011. She was terminated on December 16, 2011.

The incident that led to the claimant's termination occurred on December 15, 2011. She answered a phone call and did not say "Good Morning." The individual who placed the call was the regional director of operations. This individual told the administrator to "do something" about the claimant's failure to say "Good Morning." The claimant was terminated as a result of the directive to "do something."

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes negligence in isolated situation or mistakes of judgment or discretion. The employer has the burden of proof to show misconduct.

There is no evidence in this record of misconduct. A single instance of failing to say "Good Morning" when answering the telephone is not misconduct. The claimant knew that the employer was very service oriented and she was trying hard to say "Good Morning" or "Good Afternoon" if she did answer the phone. One mistake does not mean that the claimant breached a fundamental duty owed to the employer. The employer did not participate in the hearing and provided no evidence to substantiate any claim of misconduct. Benefits are allowed if the claimant is otherwise eligible.

The decision of the representative dated February 3, 2012, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css