

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DELPHINE VEASEY
Claimant

APPEAL NO. 11A-UI-02594-M2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCDONALDS
Employer

OC: 01/23/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated March 2, 2011, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 28, 2011. Claimant participated personally. Employer participated.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds:

Claimant was discharged by the employer sometime between January 23 and 25, 2011. The claimant had been robbed at the store a couple of weeks before the discharge. After a week off the claimant returned to work as a manager for the employer.

On January 23, 2011 she was feeling ill due to the post-traumatic stress of the robbery and was refused the right to go home. Unable to work further that day she went home after toughing it out as long as she could. The employer calls that a quit. She was then removed from the schedule. Of note is that following the workers' compensation event the employer began disciplining the claimant, clear evidence that the employer wanted to remove the claimant from the employment. The employer's witness had no first hand knowledge of the events, nor did the employer fully respond to a subpoena request. Employer's witness even attempted to blame the claimant (the victim) for the robbery.

REASONING AND CONCLUSIONS OF LAW:

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 gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant asked to go home due to a properly reported illness, was refused, went home, and then was discharged for going home following a workers' compensation event. Absence due to a properly reported illness is never misconduct. Discharge for a workers' compensation claim is a more serious legal matter than can be covered here.

DECISION:

The decision of the representative dated March 2, 2011, reference 01, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Stan McElderry
Administrative Law Judge

Decision Dated and Mailed

srm/pjs