

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on August 16, 2005.

Claimant was discharged on August 17, 2005 by employer because claimant did not meet the employer's statistical criteria for processing bills. Claimant was given a warning on July 22, 2005. Claimant was specifically told that she must meet the goal by September 2, 2005 or face possible discharge. Claimant was not meeting the 150 average set by employer. Claimant had a hand injury that inhibited her ability to perform the job. Claimant was also told to talk to a doctor to see about an excuse. Claimant did not have the opportunity to talk to the doctor as she was discharged prior to the appointment.

REASONING AND CONCLUSIONS OF LAW:

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

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).

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.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning work performance. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because claimant had a hand injury that inhibited her ability to perform the work. Since the injury in part prevented meeting of quota there is no intentional conduct. Furthermore employer did not comply with its own warning by granting claimant until September 2, 2005 to meet quota. There is a lack of proof concerning intentional conduct or carelessness in work performance. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated September 19, 2005, reference 01, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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