

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MALISSA M SONIUS
Claimant

APPEAL NO. 09A-UI-07673-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOSAIC
Employer

OC: 04/19/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated May 14, 2009, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 25, 2009. Claimant participated personally. Employer participated by Lynn Corbeil, TALX Attorney with witnesses Chris Wilhelm, Direct Support Coordinator; Stephanie Gehlhaar, Executive Director; and Cindy Cooper, Director Support Manager. Exhibits One through Seven and A were admitted into evidence.

ISSUE:

The issues in this matter are whether claimant was discharged for misconduct and is overpaid unemployment insurance benefits.

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 the employer April 21, 2009.

Employer discharged claimant on April 21, 2009 because claimant failed to complete a performance improvement plan given on January 12, 2009. The plan informed claimant that if she did not improve she would lose her job. Claimant during her three-month performance improvement plan failed in multiple aspects. Claimant had medication and charting errors and omissions. Claimant had trouble getting along with coworkers. Claimant was counseled for a falsification February 8, 2009 and had multiple counselings and reviews through April 8, 2009. Claimant had the training and experience to do the work to the employer's satisfactions. Claimant had a corrective action on April 8, 2009. No errors happened between April 8, 2009 and the discharge. Claimant was very inconsistent in her application of procedures and policies. Claimant was performing the work to the best of her ability.

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.

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.

The administrative law judge holds that the evidence has failed to establish that claimant was discharged for an act of misconduct when claimant violated the 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 there is no final or current act of misconduct. The most recent incident happened April 8, 2009. This incident is too stale to constitute a current act of misconduct. Therefore, claimant was not

discharged for an act of misconduct and as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated May 14, 2009, reference 01, is affirmed. Unemployment insurance benefits shall be allowed.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/css