

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREA L PRIOR
Claimant

APPEAL NO. 10A-UI-02013-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

LUTHERAN SERVICES IN IOWA INC
Employer

**Original Claim: 08/09/09
Claimant: Appellant (2)**

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated January 28, 2010, reference 04, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 17, 2010. The claimant participated. The employer participated by Amy Davis, service coordinator. The record consists of the testimony of Amy Davis; the testimony of Andrea Prior; and Employer's Exhibits 1 through 7.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

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

The employer provides many social services, in this case remedial services for children with mental health disabilities in western Iowa. The claimant was hired on or about October 28, 2009, as a case worker. She was a full-time employee and was assigned to work with the families and schools of children with mental health challenges. The claimant was terminated on January 6, 2010. The reason for her termination is that she did not request personal time off (PTO) for December 24, 2009, and January 4, 2010.

On December 24, 2009, the claimant received an email from the manager that advised employees not to travel due to a blizzard. The claimant worked in the morning on December 24, 2009. She did not request PTO for the afternoon, as she did not believe she had any PTO and the email indicated that employees should stay home. On January 4, 2010, the claimant worked at home on paperwork. She got sick during the night and left a message the next day for her supervisor, Amy Davis. Ms. Davis did not return the call. The claimant was still sick the next day and she was concerned that Ms. Davis had not gotten her message. The claimant could barely talk and so she sent a text message on her status. The company handbook indicated that text messaging was not an appropriate way to contact a supervisor.

Ms. Davis was also not satisfied with the claimant's work performance. In particular, she was critical of the low number of billable hours that the claimant had in December 2009.

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. 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 unsatisfactory performance and good-faith errors in judgment or discretion. The employer has the burden of proof to show misconduct.

After carefully reviewing all of the evidence in this case, the administrative law judge concludes that there is insufficient evidence to show misconduct. The two instances cited by Ms. Davis concerning the claimant's failure to request PTO are not misconduct as defined in unemployment insurance law. The claimant credibly explained that she relied on an email from the manager that she should not travel on December 24, 2009, due to weather conditions. The claimant's failure to call Ms. Davis and say she was not going to be working that afternoon is not a deliberate act that breached a material duty to the employer. The claimant also explained that she worked at home on January 6, 2010, and that she was ill the next two days. Again, the claimant may have not exercised the best judgment in texting Ms. Davis, but her actions do not constitute misconduct.

Since the employer has not met its burden of proof to show misconduct, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The representative's decision dated January 28, 2010, reference 04, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw