

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DONNA F McFARLAND**  
Claimant

**APPEAL NO. 11A-UI-00492-M2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PROGRESS INDUSTRIES**  
Employer

**OC: 11/28/10  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct  
871 IAC 24.32(1)a – Definition of Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated January 7, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 16, 2011. Claimant participated personally. Employer participated by Kelly Decker.

**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 on December 14, 2010 by the employer because she left a person with a disability in a running vehicle unattended in violation of the employer's policy, and in what is a confirmed act of adult abuse.

**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 establishes that claimant was discharged for an act of misconduct when claimant committed a confirmed act of dependent adult abuse while in the employer's employ.

**DECISION:**

The decision of the representative dated January 7, 2011, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Stan McElderry  
Administrative Law Judge

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Decision Dated and Mailed

srm/pjs