

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA L FREDERICK
Claimant

BEST BUY STORES LP
Employer

APPEAL NO: 10A-UI-10387-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/20/10
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

The claimant appealed a department decision dated July 13, 2010, reference 01, that held he was discharged for misconduct on June 18, 2010, and benefits are denied. A telephone hearing was held on September 8, 2010. The claimant participated. The employer did not participate.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant began employment on August 14, 2009, and last worked for the employer as a full-time customer service representative on June 18, 2010. The claimant disclosed to her employer that she was pregnant, and she did miss some work for this reason.

The employer terminated the claimant on June 18 for accepting a customer check-payment that failed to have a signature. The employer discovered the oversight about ten days after the check was tendered. The check was written on May 20, and the customer later honored the check with payment when requested to do so. The claimant believes the employer terminated her because of pregnancy rather than for any job performance issue.

The employer failed to respond to the hearing notice.

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 administrative law judge concludes the employer has established that the claimant was discharged for any current act of misconduct in connection with employment on June 18, 2010.

The employer learned about the check signature issue and corrected it well before the time the claimant was terminated. Since the employer did not participate, there is no evidence of any more recent issue that may be considered as misconduct.

DECISION:

The department decision dated July 13, 2010, reference 01, is reversed. The claimant was not discharged for misconduct on June 18, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs