

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRIS K BALDWIN
Claimant

APPEAL NO. 07A-UI-00928-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DAVIS COUNTY HOSPITAL
Employer

**OC: 03/05/06 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(5) – Dismissal and Trial Period
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from the decision from a representative dated January 22, 2007, reference 05, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 12, 2007. The claimant participated. The employer participated by Lois Westercamp, Human Resource Manager and Liz Zmolek, Dietician.

ISSUES:

The issues in this matter are whether the claimant was discharged for misconduct in connection with her work and whether the claimant has been 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: The claimant was employed by Davis County Hospital from September 25, 2006 until January 4, 2007, when she was discharged for inability to meet job requirements. The claimant was employed as a food service worker on a full-time basis and was paid by the hour. Her immediate supervisor was Liz Zmolek.

Ms. Baldwin was discharged when the employer believed that the claimant and other workers had not properly been taking food temperature and recording them as required. The employer believed that employees had been properly noticed about the requirement to perform these duties through written policy and in-service training.

Ms. Baldwin regularly ensured that proper temperatures were maintained during cooking, but at times failed to record the temperatures due to the requirement that she perform other job duties. The claimant believed that she was performing her duties as expected by the employer. Other employees who engaged in similar acts or omissions were not discharged but merely warned. The claimant was discharged because she was in a new employee probationary training status.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes based upon the evidence at the hearing that the employer has not sustained its burden of proof in establishing intentional disqualifying misconduct on the part of this claimant. The evidence establishes that Ms. Baldwin was a new employee who remained in a probationary training status and was dependent upon training provided by the employer and other employees to learn her job duties. The evidence establishes that Ms. Baldwin believed that she was performing her duties as expected and the claimant did not intentionally fail to perform duties assigned to her. The obligations of other job requirements at times prevented the claimant from performing all the duties as fully expected by the employer. The administrative law judge notes that other employees who performed similar acts or omissions were not discharged, but were merely warned by the employer. The evidence establishes that the employer chose to discharge Ms. Baldwin based upon her probationary "trial period status."

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(5) provides:

(5) Trial period. A dismissal, because of being physically unable to do the work, being not capable of doing the work assigned, not meeting the employer's standards, or having been hired on a trial period of employment and not being able to do the work shall not be issues of misconduct.

For the reasons stated herein the administrative law judge concludes that intentional misconduct has not been established. Accordingly, benefits are allowed. The question before the administrative law judge in this case is not whether the employer made a good business decision to terminate Ms. Baldwin but whether the discharge was disqualifying under the provisions of the Iowa Employment Security Law. For the above-stated reasons, the administrative law judge finds intentional disqualifying misconduct has not been established.

DECISION:

The decision of the represented dated January 22, 2007, reference 05, is affirmed. The claimant was discharged under nondisqualifying conditions. The claimant is eligible for benefits, provided that she meets all other eligibility requirements of the law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

css/pjs