

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN S LUDEKING

Claimant

APPEAL NO. 09A-UI-06247-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOSAIC

Employer

OC: 03/22/09

Claimant: Appellant (2)

Section 96.5-2-a - Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 15, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 19, 2009. Claimant participated personally and was represented by Dennis Larson, Attorney at Law. Employer participated by Angie Engrav, Habilitative Coordinator, and Richard Wicks, Executive Director. The employer was represented by Lynn Corbeil. The record consists of the testimony of Angie Engrav; the testimony of Richard Wicks; the testimony of Susan Ludeking; and Employer's Exhibits 1-5.

ISSUE:

The issue in this matter is whether the 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, makes the following findings of fact:

The employer in this case provides support to disabled adults. The claimant was hired on February 27, 2007 as a direct support associate. Her job duties involved assisting these adult individuals according to plans that were designed for them. The claimant had extensive training from the employer to do this job.

The claimant was terminated on March 9, 2009. The incident that led to her termination was a failure to respect the wishes of a client that she was assisting. The client had purchased a box of Fruity Pebbles cereal and the claimant talked the client into giving away the box of cereal to a food pantry. Another employee reported this incident to the employer and an investigation was conducted. The claimant told the client that the cereal was not nutritious and that she should

not eat it. The client wanted the cereal and was under no dietary restrictions. The employer determined that the claimant had violated a policy that the wishes of a client be respected.

The claimant had had previous violations of the employer's policies. She was given a written warning for an incident on January 13, 2009, when she took two clients with her to conduct personal business. The claimant stopped at Weight Watchers to weigh herself and was accompanied by two clients. She got another written warning when she tested a client's blood sugar on January 7, 2009, with her own blood sugar meter. Employees were forbidden to do medical procedures without a doctor's order. There was no doctor's order in this case. On December 7, 2008, she informed a client's guardian that the police should have "hailed his butt to jail" after an aggressive incident with that client. The claimant was given verbal counseling and told that the clients deserved respect. Finally another incident of client disrespect was reported on July 31, 2008. The claimant jiggled a chair that a client was sitting on in an attempt to get the client to move.

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 disqualifies an individual from unemployment benefits is specifically defined as a deliberate act or omission by an employee which constitutes a material breach of the duties

and obligations arising out of such employee's contract of employment. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits. Myers v. Employment Appeal Bd. 462 N.W. 2d 734, 737 (Iowa App. 1990) It is the employer's burden to establish misconduct.

After carefully considering the evidence in this case it is determined that the employer has not established the misconduct necessary to disqualify the claimant from unemployment benefits. There was evidence to show that the claimant's conduct was serious enough to warrant her discharge. She used poor judgment in all of the instances cited by the employer and her performance was unsatisfactory. However, unsatisfactory judgment and good faith errors in judgment and discretion are not deemed misconduct within the meaning of Iowa's unemployment law. Benefits will be awarded.

DECISION:

The decision of the representative dated April 15, 2009, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css