

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LACRISHA NIELAND
Claimant

APPEAL NO. 14A-UI-09273-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 08/03/14
Claimant: Respondent (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 28, 2014, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on September 25, 2014. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Treve Lumsden participated in the hearing on behalf of the employer with a witness, Philip Maxey. Exhibits E-1 through E-14 were admitted into evidence.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a cook from May 23, 2014, to August 5, 2014. As of August 3, 2014, the claimant had received six warnings—four coaching, one minor class C warning, and one major class B warnings regarding her work performance. The major class B warning was issued on July 1, 2014, and the claimant was informed it was a final written warning. She was warned at that time about having an untrained staff person serve food in the dining hall while the claimant walked around and failing to have hamburgers prepared for an always available meal option.

On August 3, 2014, the claimant was scheduled to work at 11:30 a.m. She was about 50 minutes late for work. When she arrived at work, she did not start her job duties but instead sat down in the dietary manager's office and ate a McDonald's sandwich. When she was told to go to the kitchen, she was witnessed by a cook talking on her cellphone in violation of a known work rule. She told a resident that there were no hot dogs, which was untrue because there were hotdogs in the cooler that could have been prepared.

As a result of the claimant's continued violations of the employer's work rules, failures to do her job, and past discipline, the employer discharged the claimant on August 5, 2014.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated August 28, 2014, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs