

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHERYL L ACTON
Claimant

APPEAL NO. 07A-UI-01332-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

INPRO/SEAL CO
Employer

**OC: 12/31/06 R: 04
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated January 30, 2007, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 21, 2007. Claimant participated personally. Employer participated by Kay Solbrig, Human Resources, Barbara Hawkins, Credit Manager and Stefanie Hillmann, Comptroller. Exhibit One was admitted into evidence.

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 last worked for employer on December 9, 2006.

Claimant was discharged on December 13, 2006 by employer because claimant took two weeks vacation December 10, 2006. Claimant had been warned September 20, 2006 that taking unpaid vacation would result in discharge. Claimant did not fill out a vacation request slip in advance. Claimant waited until the week prior to the vacation to turn in a vacation request slip. Claimant already had airplane tickets purchased and was committed to the vacation December 4, 2006. Claimant did inform employer in September 2006 that she wanted a two week vacation in December 2006. Employer warned claimant that she would be discharged if she went on vacation before January 2007. Claimant was deemed a no call on December 11, 2006, December 12, 2006 and December 13, 2006. Claimant was then discharged.

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.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning absenteeism. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant violated a known company rule after being warned that discharge would result. The September 20, 2006 warning clearly stated that claimant was without vacation until January 2007. Claimant ignored the warning and set her vacation for December 2006. This is an intentional violation of company policy. Furthermore, claimant failed to turn in a vacation request slip in advance which would have resolved the issue long in advance. The

administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated January 30, 2007, 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.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs