

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORRIE L EASTMAN
Claimant

APPEAL NO. 08A-UI-03424-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**HEARTLAND EMPLOYMENT
SERVICES LLC**
Employer

**OC: 03/02/08 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Lorrie Eastman filed an appeal from a representative's decision dated March 26, 2008, reference 01, which denied benefits based upon her separation from Heartland Employment Services. After due notice was issued, a hearing was held by telephone on April 22, 2008. Ms. Eastman participated personally. The employer participated by Megan Matthaides and Raymond Norman.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with her work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from August 21, 2007, until March 5, 2008, when she was discharged for excessive tardiness. Ms. Eastman was employed as a housekeeper/laundry aide working 30 or more hours per week and was paid by the hour. Her immediate supervisor was Raymond Norman. The claimant was discharged after receiving two warnings with respect to her attendance. The claimant had been tardy in reporting to work on approximately seven occasions during her short period of employment with the company. Although the claimant was aware that her employment was in jeopardy, she continued to arrive at work after the 7:00 a.m. starting time and was discharged by the employer.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge in this case is whether the evidence establishes that the claimant was discharged under disqualifying conditions. It does.

The evidence in the record establishes that the claimant had been repetitively tardy in reporting to work, although she had been warned verbally on numerous occasions and had received two written warnings from the company. The claimant often arrived late due to not leaving early enough to drop her child off at school on the way to work and because, at times, the claimant's weekend paper route caused her to be late in reporting to work. Although the claimant understood the hours expected by the employer, the claimant hoped for some variation in her working hours by the employer. The

employer was unwilling to alter the claimant's accepted working hours, because of job responsibilities.

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.

For the reasons stated herein, the administrative law judge concludes that the claimant was discharged for misconduct. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated March 26, 2008, reference 01, is hereby affirmed. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided that she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw