

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SALLY A SOKOLIK**  
Claimant

**APPEAL NO. 11A-UI-10175-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SHOPKO STORES OPERATING CO LLC**  
Employer

**OC: 06/26/11**  
**Claimant: Appellant (5)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Sally A. Sokolik filed a timely appeal from an unemployment insurance decision dated July 29, 2011, reference 02, that disqualified her for benefits upon a finding that she had voluntarily left employment without good cause attributable to the employer. After due notice was issued, a telephone hearing was held August 29, 2011 with Ms. Sokolik participating. Pharmacy Manager Verne Benjamin participated for the employer, Shopko Stores Operating Company LLC. Claimant Exhibit A was admitted into evidence.

**ISSUE:**

Was the claimant discharged for misconduct in connection with her employment?

**FINDINGS OF FACT:**

Sally A. Sokolik was employed as a pharmacy technician by Shopko Stores Operating Company from June 29, 1998 until she was discharged July 1, 2010. In 2009 the Board of Pharmacy Examiners established a rule requiring that all pharmacy technicians receive state certification on or before July 1, 2010. Certification was to be done by written examination. Ms. Sokolik knew of this requirement. Despite this, she did not take the certification test. In April 2010 the Iowa General Assembly adopted a statute that created an exception to the rule for pharmacy technicians who had worked a minimum of 2,000 hours between January 1, 2009 and July 1, 2010. Ms. Sokolik had worked 1,733 hours during that time period. She was discharged by Pharmacy Manager Verne Benjamin on July 1, 2010 because she had not passed the certification test and had not worked at least 2,000 hours in the last 18 months.

**REASONING AND CONCLUSIONS OF LAW:**

The parties agree that the separation was a discharge not a quit. The question becomes whether the discharge was for misconduct in connection with the employment. It was.

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.

The critical fact in this record is that Ms. Sokolik did not attempt the certification test. Had she taken the test and failed, showing good faith in attempting to meet the new certification, the administrative law judge would have viewed the case as one being discharged for lack of ability. Since the parties agree that Ms. Sokolik knew of the requirement and did not attempt to pass the test, the administrative law judge views the separation as being for a willful failure to follow instructions. Benefits are withheld.

**DECISION:**

The unemployment insurance decision dated July 29, 2011, reference 02, is modified. The claimant was discharged for misconduct in connection with her employment. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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