

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RACHELL I DAVIS

Claimant

APPEAL NO. 12A-UI-03951-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC

Employer

OC: 02/12/12

Claimant: Appellant (1)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Rachell Davis filed a timely appeal from the April 2, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 3, 2012. Ms. Davis participated. Monica Dyar, Human Resources Supervisor, represented the employer. Exhibits One through Six and Department Exhibit D-1 were received into evidence.

During the hearing on May 3, 2012, the administrative law judge received into evidence Department Exhibit D-1, an obituary the claimant had provided to the Workforce Development Claims Deputy in connection with the fact-finding interview. The administrative law judge provided the employer with a copy of the exhibit during the hearing. In response to the employer's concern about not having an opportunity to investigate the validity of the purported obituary, the administrative law judge notified the employer of their right to request that the hearing record be reopened. After the record closed on May 3, the employer promptly investigated the validity of the obituary and submitted a written request to reopen the record. The parties agreed to appear for a reopened hearing on May 4, 2012, but the claimant disconnected from the call shortly after the administrative law judge got her on the line. The matter was postponed to May 17, 2012 in order to provide the claimant with formal notice. At the time of the hearing on May 17, the claimant hung up on the administrative law judge without responding to the administrative law judge's greeting. The second time the administrative law judge attempted to reach the claimant, the phone rang several times and then the call was routed to a voice mail box that clearly indicated the number belonged to the claimant. The administrative law judge left an appropriate message that included the toll free number the claimant should call immediately to participate in the hearing.

The employer appeared for the May 17 proceeding through Ms. Dyer. Exhibits 7 and A were received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Rachell Davis was employed by West Liberty Foods as a full-time molder from June 2011 until February 17, 2012, when the employer discharged her for dishonesty in connection with use of bereavement leave. Ms. Davis left work early on February 9 and then was absent for shifts on February 10 and 13, all for purported bereavement leave. Ms. Davis returned to work on February 14, but left work early. On February 15, Ms. Davis returned to work and provided the employer with a partial obituary. The obituary stopped in mid-sentence. The employer investigated the validity of the information contained in the document provided by Ms. Davis and noted discrepancies between that document and the obituary contained on a funeral home website. The obituary was in fact bogus and had been cobbled together by Ms. Davis. The employer suspended Ms. Davis pending further investigation. Ms. Davis assured the employer that she could provide verifiable information that would confirm her familial relationship to the decedent and the date of the death. Ms. Davis then ignored the employer's attempts to reach her by phone and provided no further documentation. After two days, the employer sent Ms. Davis a letter discharging her from the employment for falsifying bereavement leave documentation. The employer invited Ms. Davis to make further contact with the employer. Ms. Davis received the discharge letter on February 21, 2012. Ms. Davis had not made any further contact with the employer in the six days since the employer suspended her and did not contact the employer in response to the letter.

Ms. Davis participated in a fact-finding interview at the end March 2012. Ms. Davis provided another bogus obituary, which the Workforce Development deputy received into the record as potentially exculpatory evidence. See Department Exhibit D-1. This second obituary was also bogus, something cobbled together by Ms. Davis in an attempt to mislead Workforce Development. This second obituary purports to be from a funeral home that changed ownership and name several years ago.

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The evidence indicates that Ms. Davis attempted to perpetrate a fraud upon Workforce Development to obtain benefits. She did so by presenting a bogus obituary as exculpatory evidence in connection with the fact-finding interview. Ms. Davis continued her scheme in connection with the appeal hearing. Ms. Davis abandoned her scheme, and abandoned participation in the appeal hearing process, once the employer presented evidence that clearly refuted the bogus information provided by Ms. Davis.

The evidence in the record establishes that Ms. Davis was indeed dishonest with the employer in connection with use of bereavement benefit leave time. Ms. Davis went beyond that and attempted to perpetrate a fraud upon the employer by crafting a bogus obituary. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Davis was discharged for misconduct. Accordingly, Ms. Davis is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Davis.

DECISION:

The Agency representative's April 2, 2012, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css