

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA M KING
Claimant

APPEAL NO. 11A-UI-02207-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GUTHRIE COUNTY VETERINARY SERVICE
Employer

**OC: 07/04/10
Claimant: Appellant (5)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Lisa King, filed an appeal from a decision dated February 21, 2011, reference 04. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on March 22, 2011. The claimant participated on her own behalf. The employer, Guthrie County Veterinary Service (GCVS), participated by Corporate Officers Donna Paglialunga and Doug Frels.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Lisa King was employed by GCVS from February 1, 2010 until November 22, 2010 as a part-time receptionist. The employer warned the claimant verbally on June 26, 2010, to keep her cell phone in her purse and not in her pocket because she was making and receiving personal phone calls during work hours. She ignored the warning and continued using the cell phone. A written warning was given July 23, 2010, when Corporate Officer Doug Frels had to go looking for the claimant because she was not at her workstation. He found her talking on her cell phone in the back room.

After that warning she did not use her cell phone but made and received phone calls from her mother and boyfriend she considered to be “emergencies.” Her mother was in the hospital but would call Ms. King to pick up medication “for when she got home.” The mother was in the hospital and any medication she needed would be dispensed by the hospital staff. Ms. King did not explain why picking up medication for when her mother was released from the hospital required her to be called during work hours and not when she was off duty.

After that warning she was counseled verbally about inaccurate dispensing of medications. She had been trained by the veterinary technician at the time of hire. In spite of that she did not count accurately and did not read the doctor’s notes to dispense the correct medication. Dr. Paglialunga had to be with her whenever medication was dispensed.

On November 15, 2010, the claimant mischarged a client. The doctor had given the client a medication and put on the notes it was a "coupon" which meant there was no charge. Ms. King charged the client full price and a few days later the client had to come back in for a refund. The employer gave the refund and decided to discharge the claimant. She intended to do so on Friday, November 19, 2010, but Ms. King was absent that day. Dr. Paglialunga notified the claimant on Monday, November 22, 2010, she was fired.

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 claimant had been warned about various aspects of her work performance being unsatisfactory. She ignored the warnings and continued talking on her cell phone during business hours and then using the business phone for personal matters. These matters were not, in fact, emergencies but personal phone calls.

In addition to conducting her personal life during business hours and on the business phone, she did not carefully attend to her duties. She mischarged clients and did not accurately dispense medications per doctor's orders. This is not a one-time error in judgment but an on-going willful negligence and refusal to follow orders. This is a violation of the duties and responsibilities the employer has the right to expect of an employee This is a violation of the

duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of February 21, 2011, reference 04, is modified without effect. Lisa King is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css