

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELIZABETH A PARTIN

Claimant

APPEAL NO. 12A-UI-14028-H2

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PRAIRIE HILLS AT OTTUMWA
OPERATIONS LLC**

Employer

OC: 10-21-12

Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 21, 2012, reference 02, decision that denied benefits. After due notice was issued, an in-person hearing was held on March 26, 2013 in Ottumwa, Iowa. The claimant did participate. The employer did not participate. Employer's Exhibit One which was sent into the Appeals Section by the employer prior to the hearing was entered and received into the record. Claimant's Exhibit A was entered and received into the record.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant worked as a caretaker full time beginning November 14, 2011 through November 7, 2012 when she was discharged. The claimant was specifically instructed in April 2012 that she was not to clock in any earlier than five minutes prior to the start of her shift. She admits that prior to the warning being given to her she was clocking in early. The employer is allowed to expect employees to report to work when expected and when scheduled. The claimant violated the employer's policy on at least two separate occasions on November 5 and November 7. There is no evidence that the claimant was ever given permission to come and go as she chose. The claimant was given specific written instructions that she follow the set schedule. There is nothing in writing changing the claimant's requirement that she show up on time as scheduled. The claimant's argument that the employer agreed to her changing her start time whenever she wanted to is simply not believable in light of the specific instructions given to her. The claimant simply was told to follow instructions but did not do so.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant was never given permission to violate the specific April 16, 2012 directive that she show up for work on time when scheduled. The record indicates that the claimant failed to follow that directive after warning on two separate occasions in November 2012 and was discharged. Claimant's repeated failure to accurately follow the work schedule after having been warned is evidence of disregard of the employer's best interests to such a degree of recurrence as to rise to the level of disqualifying job related misconduct. Benefits are denied.

DECISION:

The November 21, 2012 (reference 02) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs