

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANE L HARVEY
Claimant

APPEAL NO. 08A-UI-02293-H

**ADMINISTRATIVE LAW JUDGE
DECISION**

IA STUDENT LN LIQUIDITY CORP
Employer

OC: 02/10/08 R: 02
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

Diane L. Harvey filed an appeal from the decision dated March 3, 2008, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held in Des Moines, Iowa on April 1, 2008. The claimant participated on her own behalf. The employer, Iowa Student Loan Liquidity Corporation (ISLLC), participated by Director of Human Resources Robert Krueger and Lending Services Supervisor Ashlie Van Horn. Exhibits One through Seven were admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Diane Harvey was employed by ISLLC from March 30, 1992 until February 11, 2008. She was a full-time Lender Services Specialist I. Ms. Harvey had received written warnings regarding her lack of productivity and other performance issues. These were dated May 23, 2006, July 26, 2007, and September 21, 2007. She was given a final written warning on December 7, 2007 which notified her that her job was in jeopardy. This warning was prompted largely by "time clock issues." The claimant was doing many personal tasks after clocking in instead of being at her desk working.

This last warning was very specific that it was her final warning that her behavior would "not be tolerated." She was notified her job was in jeopardy and any further incidents would be grounds for disciplinary action up to and including termination. Included in this warning were instructions she was to do any personal matters such as reading the newspaper and having extended conversations, either in person or on the phone, with friends, family and co-workers prior to clocking in or when on her lunch break.

On Friday, February 8, 2008, the claimant received a call from her sister. This was not prior to clocking in, on her break, or on her lunch period. She talked to her sister for 9 minutes and

38 seconds. The claimant acknowledged receiving the phone call and talking for an extended period of time and indicated this was not any family emergency which required her immediate and absolute attention.

Supervisor Ashlie Van Horn reported the matter to Human Resources Director Robert Krueger on February 11, 2008. After a review of her personnel file and prior disciplinary action, the decision was made to discharge her. Mr. Krueger and Ms. Van Horn notified her in person later that day that she was discharged for violation of the company policies and her prior written warning.

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 advised her job was in jeopardy as a result of low productivity and conducting too much personal business on company time. In spite of the warning, she engaged in a lengthy personal telephone conversation with her sister on non emergency subjects. This was in the middle of the work day when she was expected to be doing the work assigned to her. The claimant did not make any attempt to shorten the conversation with her sister and calling her back on a break or lunch period. Instead she continued the conversation during the work day to the detriment of the employer. This is conduct not in the best interest of the employer and the claimant is disqualified.

DECISION:

The representative's decision of March 3, 2008, reference 01, is affirmed. Diane Harvey is disqualified and benefits are withheld until she has requalified by earning ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs