

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EMILY J GJERSVIG
Claimant

APPEAL NO. 11A-UI-11291-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABCM CORPORATION
Employer

OC: 07/10/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Emily Gjersvig (claimant) appealed a representative's August 17, 2011 decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with ABCM Corporation (employer) for failure to follow instructions in the performance of her work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 27, 2011. The claimant participated personally and through her father, Harold Gjersvig. The employer participated by Tiffany Adams, human resources coordinator.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on May 26, 2009, as a full-time activities aid. The claimant signed for receipt of the employer's handbook on November 11, 2010. The employer issued the claimant a written warning on April 15, 2011, after a resident was given chicken wings, contrary to the resident's doctor's orders. Another staff member gave the resident the chicken. On June 13, 2011, the employer issued the claimant a written warning for failure to cancel a food order for an outing that had been cancelled due to lightning. The lightning did not occur until 2:00 p.m. The claimant cancelled the food order as soon as she cancelled the outing.

On July 6, 2011, the claimant took residents on an outing to Adventureland. Based on previous training provided by the employer, the claimant did not add Thicket to a resident's milkshake because it was nectar thickened. The employer terminated the claimant on July 7, 2011.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

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 establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide any evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's August 17, 2011 decision (reference 02) is reversed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw