

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANA J BEACH
Claimant

APPEAL NO. 07A-UI-02600-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LEE COUNTY
Employer

**OC: 02/04/07 R: 04
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Lee County (employer) appealed a representative's March 9, 2007 decision (reference 02) that concluded Diana Beach (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 29, 2007. The claimant participated personally. The employer participated by Janet Strunk, Lee County Treasurer. Michael Short observed the hearing.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on February 6, 1984, as a full-time motor vehicle deputy. Lee County has two courthouses and had three deputies. The employer wanted a deputy in each courthouse. One deputy was moving away and her employment was ended. On January 3, 2007, the employer gave the claimant a classification specification which added new duties for the claimant and forced her to travel to the Keokuk Courthouse rather than continue working in the Fort Madison Courthouse. The claimant and the employer met on or about January 9, 2007, and discussed the work assignment changes. The claimant told the employer she did not wish to quit but offered ideas so she would not have to travel 70 miles to and from work everyday. The employer terminated the claimant effective January 29, 2007. The claimant's last day of work was January 26, 2007.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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). The employer discharged the claimant and has the burden of proof to show misconduct. The employer did not provide any evidence of misconduct at the hearing. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's March 9, 2007 decision (reference 02) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css