

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HOLLY L FAZIO
Claimant

APPEAL NO. 11A-UI-10325-S2

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA DEPARTMENT OF NATURAL
RESOURCES**
Employer

OC: 07/03/11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Holly Fazio (claimant) appealed a representative's July 27, 2011 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Iowa Department of Natural Resources (employer) for excessive unexcused absenteeism and tardiness after being warned. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for September 1, 2011. The claimant participated personally. The employer was represented by David Williams, Assistant Manager, and participated by Dave Cretors, Bureau Chief. Jennifer St. John observed the hearing. The employer offered and Exhibit One was received into evidence.

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 considered all of the evidence in the record, finds that: The claimant was hired on October 3, 1997, as a full-time clerk advanced. The claimant signed for receipt of the employer's handbook and State Policies on February 11, 2000, and September 15, 2000. The employer issued the claimant written warnings on December 1 and December 28, 2009, for failure to properly notify the employer of absences. The employer notified the claimant that further infractions could result in termination from employment.

On September 1, 2010, the employer issued the claimant Work Directives. The claimant was required to notify the employer prior to her start time of 8:00 a.m. if she were going to be absent. The claimant was also required to provide a contact number where she could be reached. The employer issued the claimant written warnings and suspensions on February 28, and March 28, 2011, for failure to properly notify the employer of an absence. The employer notified the claimant that further infractions could result in termination from employment.

On June 10, 2011, the claimant was released to return to work by her physician after an illness. The claimant overslept and woke at 8:10 a.m. She immediately notified the employer that she would be late arriving for work. The claimant arrived at work at 9:05 a.m. The employer met with the claimant to ask questions. The employer notified the claimant that an investigation would take place to determine whether the claimant would be reprimanded or terminated. On June 29, 2011, the employer terminated the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was 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). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions with regard to proper reporting of absences. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's July 27, 2011 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css