

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELINA P ANCER
Claimant

APPEAL NO. 07A-UI-02734-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JACOBSON INDUSTRIAL SERVICES
Employer

**OC: 03/07/06 R: 02
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 7, 2007, reference 01, that concluded the claimant voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on April 3, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant worked for the employer on an assignment as an order puller at Diamond Crystal Company from December 15, 2005, to February 9, 2007.

The supervisor at Diamond Crystal informed the claimant that she was terminated from her job at Diamond Crystal due to absenteeism after she was sick and unable to work on February 6, 2007. She called in properly to report her absence. The previous absences the claimant had were for legitimate illness or were pre-approved time off for personal reasons. She had never been disciplined or warned that her job was in jeopardy prior to February 6, 2007.

The claimant did not call the employer after the supervisor at Diamond Crystal had discharged her because in January 2007, after she had complained about something that had happened at Diamond Crystal, a manager told her that if she lost the job at Diamond Crystal, the employer would not place her in another job.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. The claimant had been told that she would not be placed in another job if she was discharged from Diamond Crystal, so there would not have been any reason to contact the employer after she was terminated from working at Diamond Crystal. The separation must be treated as a discharge.

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 was terminated due to absenteeism but had legitimate reasons for being absent and properly reported her absences. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated March 7, 2007, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw