

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALMA J WESTON
Claimant

APPEAL NO. 07A-UI-01517-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITYWIDE CLEANERS INC
Employer

**OC: 02/19/06 R: 03
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Alma Weston, filed an appeal from a decision dated February 6, 2007, reference 04. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on February 27, 2007. The claimant participated on her own behalf. The employer, Citywide Cleaners, participated by General Manager Tom Hardecopf and Plant Manager Tim Freeze.

ISSUE:

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

FINDINGS OF FACT:

Alma Weston was employed by Citywide Cleaners from March 31, 2006 until January 5, 2007, as a full-time clothes finisher. She began work at 7:00 a.m. and left when the day's work was finished, any time between noon and 3:00 p.m.

The claimant reported an injury to her arm on January 2, 2007, and the employer sent her to the doctor. The physician put her on lifting restrictions and referred her for physical therapy. On January 3, 2007, the employer notified Ms. Weston she had a physical therapy appointment that afternoon at 1:30 p.m. Early the next morning General Manager Tom Hardecopf asked her how the session had gone and she reported the therapist had "really worked" the arm and now it hurt more than ever.

Around 12:30 p.m. the same day, Ms. Weston was asked to meet with Plant Manager Tim Freeze and Mr. Hardecopf. She was asked again how the physical therapy session had gone and she repeated her earlier statement about the arm hurting worse than ever after the therapy. The employer then notified her he had received a call from the therapist who said she had been a no-call/no-show for the appointment. At that time Ms. Weston confessed she had not gone to the therapy session after all, reportedly because she did not have transportation. At no time prior to leaving work the day before had she notified the employer of any transportation problems nor asked for a ride.

The claimant's work shift was over by the time the meeting ended. The employer consulted about the matter and discharged her the next morning for dishonestly. Ms. Weston had received copies of the employer's policies and disciplinary procedures which provides for discharge of any employee found guilty of dishonesty.

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.

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 claimant deliberately lied to the employer about her attendance at the physical therapy session. While it may be true she did not have transportation, she did not notify the employer this was a problem. Nor did she admit, upon being questioned twice the next day, that she had not gone, but lied and stated her arm was worse. This was a work-related injury for which the employer was financially responsible and the claimant's misrepresentation could have had serious repercussions. The employer has the right to expect employees to be honest and the claimant's failure to tell the truth is conduct not in the best interests of the employer. She is disqualified.

DECISION:

The representative's decision of February 6, 2007, reference 04, is affirmed. Alma Weston is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css