

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REBECCA J DEROCHIE
Claimant

APPEAL NO. 12A-UI-09654-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRAFFIX INC
Employer

OC: 08/07/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated August 2, 2012, reference 08, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 4, 2012. The claimant failed to respond to the hearing notice and did not participate. The employer participated by Reed Graff, owner/supervisor. The record consists of the testimony of Reed Graff.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The employer does screen printing and embroidery. The claimant was hired on May 8, 2012. She was hired to fill the position of customer service representative. This was a full-time position. The claimant's last day of work was July 13, 2012. She was terminated on July 13, 2012. She was terminated because she did not perform the job to the employer's satisfaction. The claimant was repeatedly trained on how to do the job and her work had to be redone by the employer.

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. The legal definition of misconduct specifically excludes unsatisfactory work performance due to the claimant's inability or incapacity. Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. Kelly v. IDJS, 386 N.W.2d 552 (Iowa App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988).

In this case, there was insufficient evidence to show misconduct. The claimant was terminated because she did not do the job to her employer's satisfaction. The employer offered training and help and the claimant simply never did the job. Her work had to be constantly redone by the employer. Although the administrative law judge can understand why an employer would view this as "misconduct", the law requires that there be a showing that the claimant was able to do the job and deliberately chose not to perform as required and expected. The evidence fails to show that the claimant ever did the job satisfactorily. While the employer may have made a good business decision to terminate the claimant, there is insufficient evidence of disqualifying misconduct. Benefits are allowed if the claimant is otherwise eligible.

The administrative law judge would note that the claimant has filed for only one week of benefits since her termination and the employer has not been charged as the employer is not a base period employer.

DECISION:

The decision of the representative dated August 2, 2012, reference 08, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs