

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

REBECCA L LUNSFORD
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ALBION IA 50005-0143

CARE INITIATIVES
c/o JOHNSON AND ASSOCIATES
PO BOX 6007
OMAHA NE 68106-6007

Appeal Number: 06A-UI-04316-RT
OC: 03/19/06 R: 02
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Care Initiatives, filed a timely appeal from an unemployment insurance decision dated April 10, 2006, reference 01, allowing unemployment insurance benefits to the claimant, Rebecca L. Lunsford. After due notice was issued, a telephone hearing was held on May 11, 2006, with the claimant participating. Jacqueline Barnes, Administrator at the employer's location in State Center, Iowa, participated in the hearing for the employer. The employer was represented by Thomas Morrissey of Johnson and Associates, now TALX Corporation. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time dietary manager from March 2, 2006, until she was discharged on March 24, 2006. The claimant was discharged for not telling the truth and for not keeping the kitchen clean. Concerning issues of lack of truthfulness, on March 22, 2006, the claimant was specifically asked by the administrator, Jacqueline Barnes, the employer's witness, to prepare a quality assurance sheet. The claimant did not do so but when Ms. Barnes asked the claimant about the sheet the next day, March 23, 2006, the claimant informed Ms. Barnes that she had completed it. When Ms. Barnes could not locate the quality assurance sheet she asked the claimant where it was and the claimant admitted then that she had not done it. Ms. Barnes asked the claimant why and the claimant had no response. Even the claimant conceded that this was wrong. The claimant was then discharged on March 24, 2006.

Concerning additional truthfulness issues, the claimant failed to report two broken items, an electric hand mixer and an electric knife. The employer requires that Ms. Barnes be informed of all broken or damaged items so that she can see to the repair or replacement of the items. The claimant did not inform Ms. Barnes of either of the broken items noted above. The claimant conceded that she should have done so. The claimant testified that she did not do so because she was going to replace them herself but the claimant never did so before she was discharged. On March 23, 2006, the claimant was specifically asked to do a food order. The claimant began the food order but did not finish it. She simply ran out of time. However, because Ms. Barnes also did the food order, no problems were caused by the incomplete food order prepared by the claimant. The claimant was then discharged on March 24, 2006.

Concerning the cleanliness of the kitchen, on two occasions the claimant failed to completely wash dishes leaving two items to soak while the claimant left work. The claimant also failed to clean a toaster and the claimant concedes that she did not do it as she should have because she had more important things to do. The claimant was also accused of not completing daily cleaning but the claimant denied this. On March 20, 2006, the claimant received a verbal warning for attendance when she was 45 minutes late. During that verbal warning other matters were discussed with the claimant including the importance of cleaning the kitchen and daily documentation.

Pursuant to her claim for unemployment insurance benefits filed effective March 19, 2006, the claimant has not received unemployment insurance benefits although she has filed six weekly claims. Records show that the claimant is presently disqualified to receive unemployment insurance benefits as a result of a disqualifying separation on February 7, 2006 from a prior employer. This disqualifying separation was by decision dated April 12, 2006, at reference 02, and affirmed by an administrative law judge by decision dated May 12, 2006. Since that disqualifying separation the claimant has only earned \$618.00 and that was from the employer herein. The claimant's weekly benefit amount is \$249.00. The claimant would have to earn ten times her weekly benefit amount or \$2,490.00 in order to requalify to receive unemployment insurance benefits following the disqualifying separation from the prior employer on February 7, 2006. The claimant has not earned that amount.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. She is not because she has received no such benefits following her separation from the employer herein.

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 parties agree, and the administrative law judge concludes, that the claimant was discharged on March 24, 2006. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. Employer's witness, Jacqueline Barnes, Administrator at the employer's site in State Center, Iowa, where the claimant was employed, credibly testified that

the claimant was discharged for two reasons, not telling the truth and not keeping the kitchen clean.

Concerning the lack of truthfulness, the evidence establishes, as set out in the Findings of Fact, that the claimant told the employer that she had prepared a quality assurance sheet when she had not done so and the claimant conceded that this was wrong. Further, the evidence indicates that the claimant failed to report two broken items which she should have done and which she conceded she should have done. The claimant testified that she was going to replace the items but the administrative law judge does not believe that this is an excuse for not reporting the items. Further, the claimant did not replace the items before her discharge. Finally, the claimant also testified that she was supposed to do a food order by March 23, 2006 and said that she would do so but she did not finish it. Ms. Barnes did do a complete food order. If Ms. Barnes had not done the food order, the employer would have been in serious difficulties because of a lack of food. The administrative law judge concludes that the cumulative effect of the claimant's lack of truthfulness and the claimant's concessions that she was not truthful establish that her lack of truthfulness were deliberate acts or omissions constituting a material breach of her duties and obligations arising out of her worker's contract of employment and evince a willful or wanton disregard of the employer's interests and are, at the very least, carelessness or negligence in such a degree of recurrence, all as to establish disqualifying misconduct.

Concerning the cleanliness of the kitchen, the evidence establishes that on two occasions the claimant failed to completely wash dishes and failed to appropriately clean a toaster. Even the claimant concedes that she did not clean these items but testified that she left two items to soak. The administrative law judge does not believe that this justifies the failure to wash dishes when it is the claimant's responsibility to do so. The evidence also establishes that the claimant did not complete her daily cleaning obligations. The claimant denied this but her denial is not credible and the administrative law judge concludes that the claimant did fail to keep the kitchen clean. The evidence also establishes that the claimant received a verbal warning on March 20, 2006 for a failure to keep the kitchen clean. It is true that the verbal warning was initiated as a result of a tardy to work for which the claimant was not discharged but at that verbal warning the cleanliness of the kitchen and the importance of daily documentation was discussed with the claimant. The administrative law judge concludes here that the claimant's failure to keep the kitchen clean as noted was not willful or deliberate but was carelessness or negligence in such a degree of recurrence as to establish disqualifying misconduct.

In summary, and for all the reasons set out above, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant, until, or unless, she requalifies for such benefits.

The administrative law judge notes that even should the administrative law judge herein determine that the claimant is entitled to benefits, the claimant would still not receive benefits because of a disqualifying separation from a prior employer on February 7, 2006 by representative's decision dated April 12, 2006, at reference 02, which decision was affirmed by an administrative law judge by decision dated May 12, 2006. The claimant has not requalified to receive unemployment insurance benefits following that disqualifying separation by earning in excess of ten times her weekly benefit amount of \$249.00 or \$2,490.00 from the employer herein which was the only employer following the disqualifying separation.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received no unemployment insurance benefits since separating from the employer herein on or about March 24, 2006 and filing for such benefits effective March 19, 2006. Since the claimant has received no unemployment insurance benefits she is not overpaid such benefits.

DECISION:

The representative's decision of April 10, 2006, reference 01, is reversed. The claimant, Rebecca L. Lunsford, is not entitled to receive unemployment insurance benefits, until, or unless, she requalifies for such benefits, because she was discharged for disqualifying misconduct. Since the claimant has received no unemployment insurance benefits she is not overpaid such benefits.

cs/pjs