

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONI L DAVIDSON
Claimant

APPEAL NO. 13A-UI-07244-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WESLEYLIFE
Employer

**OC: 05/23/13
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Wesleylife, filed an appeal from a decision dated June 12, 2013, reference 01. The decision allowed benefits to the claimant, Roni Davidson. After due notice was issued a hearing was held by telephone conference call on July 24, 2013. The claimant participated on her own behalf. The employer participated by Director of People and Culture Betty Stone, Director Private Duty Home Care Maria Jordon and was represented by TALX in the person of Toni Kerr.

ISSUE:

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

FINDINGS OF FACT:

Roni Davidson was employed by Wesleylife from March 5, 2009 until May 24, 2013 as a part-time home care aide. She received a copy of the employer's policies during her employment. Wesleylife has a zero tolerance tobacco policy. Employees may not smoke on company property or the property of outside clients, not even on paid breaks. The facilities have no areas where employees may smoke. This is out of concern for the clients who are elderly or have health problems and should not be exposed to smoke.

Ms. Davidson had been given written and verbal warnings regarding attendance and use of her personal cell phone during the course of her employment. In September 2012 she was seen smoking a cigarette in her car in the parking lot. Supervisor Julie Reed approached her and asked if she was aware of the no smoking policy. The claimant acknowledged she did and was told this was a verbal warning.

On May 22, 2013, CEO Rob Kretzinger again saw her smoking in her car in the parking lot, with the window down and tossing the ashes and cigarette butt onto the parking lot surface. He reported this and it was investigated by Director of Private Duty Home Care Maria Jordon.

Ms. Jordon interviewed Ms. Davidson and she admitted she knew the policy and had been smoking. After a review of the claimant's disciplinary history she was discharged by Ms. Jordon on May 24, 2013.

Roni Davidson filed a claim for unemployment benefits with an effective date of May 26, 2013. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

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.

The claimant had been advised her job was in jeopardy as a result of her many violations of work rules. The zero tolerance for tobacco use is important to maintain a healthy environment for clients. The employer has the obligation to provide a safe and healthy environment for all clients and the claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of June 12, 2013, reference 01, is reversed. Roni Davidson is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs