

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ZUHRIJA PAJIC

Claimant

APPEAL NO. 07A-UI-05323-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCOTTISH RITE PARK INC

Employer

**OC: 04/29/07 R: 02
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Zuhrija Pajic (claimant) appealed an unemployment insurance decision dated May 17, 2007, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from the Scottish Rite Park, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 11, 2007. The claimant submitted a written statement in lieu of participating, as she is out of the country until August 2007. The employer participated through Nicole Hammer, Human Resources, and Jeff Halvorsen, Dietary Manager. Claimant's Exhibit A was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time dietary aide from March 27, 1997 through April 9, 2007, when she was discharged for theft of company property. The employer is a health care facility and has a zero tolerance policy on theft. On April 8, 2007, at approximately 7:35 p.m., Dietary Manager Jeff Halvorsen returned to the facility to retrieve some paperwork. He came into the kitchen from the back doors and saw the claimant placing food items in a trash bag. She took two one-half gallons of milk and a large container of sour cream from the cooler and placed them in the bag. The claimant was not aware of Mr. Halvorsen's presence until he asked her what she was doing. She began saying that she did not know and said it several times. The claimant closed up the trash bag, took it over and placed it in a trash can in another part of the kitchen even though there was a trash can closer to where she had been standing. Mr. Halvorsen retrieved the trash bag out of the garbage and pulled out the food items. The claimant then began to say she was sorry, but Mr. Halvorsen told her to come to his office in the morning and advised her to bring anyone with her that she wanted. He wanted another witness with him at the time of her discharge and the claimant's

supervisor, Chieng Luong, was present for the meeting the following morning. The claimant did not bring anyone with her, even though there were several other co-employees who speak her primary language. She told the employer she should not be fired because she did not remove the items from the facility, but Mr. Halvorsen told her that was only because he caught her in the act. The employer admitted there was a "pilfering" issue at work.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for theft of company property after the dietary manager caught her in the act on April 8, 2007. The employer has a zero tolerance policy regarding theft. The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected

misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated May 17, 2007, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw