

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NINE AL FURLONG
Claimant

APPEAL NO. 08A-UI-06246-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**POGIE INC
CW ENTERPRISES**
Employer

**OC: 06-01-08 R: 03
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 1, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 22, 2008. The claimant did participate. The employer did participate through (representative) Connie Pogemiller, Owner, Amber Porter, Housekeeper, Mary Freese, Assistant and Stephanie Dlouhy, Housekeeper.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a housekeeper full time beginning June 19, 2007 through June 2, 2008 when she was discharged.

The claimant was discharged when the employer discovered that she had used the microwave at a client's home to heat up her lunch. The claimant worked as a housekeeper. One of the employer's rules was that the housekeepers are not allowed to use any of the homeowner-client's possessions or belongings for personal use with the exception of the bathroom. If using the bathroom the housekeeper was expected to clean the bathroom after she used it. In March of 2008 the claimant was warned about using homeowner-client's possessions when the employer discovered that she had used a clients perfume while cleaning the client's home. The claimant was specifically told in a March 13 meeting at which both Connie Pogemiller and Stephanie Dlouhy were present that she was not to use any of the homeowner's belongings for her personal use and that if she did so again, she would be discharged. The claimant admitted in front of both Ms. Pogemiller and Ms. Dlouhy that she had used the client's perfume.

Ms. Pogemiller asked the claimant's coworker Amber Porter how the claimant was performing and working in the houses. Ms. Porter reported that some weeks before she had seen the claimant use a client's microwave to heat up her lunch before they went on lunch break.

Ms. Porter questioned the claimant who told her that she had been given permission to use a client's microwave by Mary Freese. On June 2 Ms. Pogemiller, about one week after she found out about the incident, asked the claimant if she had used a client's microwave to heat up her lunch. The claimant admitted to Ms. Pogemiller that she had used the microwave to heat up her lunch. Ms. Pogemiller told the claimant that she had been forbidden from using the homeowner-client's possessions for her own personal use. The claimant told Ms. Pogemiller that Mary Freese had given her permission. When Ms. Pogemiller questioned Ms. Freese that same day, Ms. Freese denied giving the claimant permission to use the microwave or any other possession of the client's for her personal use.

At hearing the claimant denied ever using a homeowner-client's perfume or ever using a homeowner-client's microwave. The claimant said she had sprayed Febreze in a client's home, not perfume. The claimant admits that she was told in March that she was never to use a homeowner-client's possessions for her own personal use.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 claimant admitted in March that she had used perfume belonging to a client. The claimant was seen by Ms. Porter using a client-homeowners microwave for her own personal use. When the employer discovered the claimant had again broken the rules about using the client's possessions, the claimant was discharged. Neither Ms. Pogemiller nor Ms. Dlouhy ever heard the claimant offer Febreeze as an explanation for the smell until the time of the hearing. The administrative law judge finds the consistent testimony of Ms. Pogemiller and Ms. Dlouhy more persuasive than the claimant's denials. The claimant was warned in March not to use the client's possessions. When the employer discovered she had done so again without permission the claimant was discharged.

As employer had previously warned claimant about the issue leading to the separation, it has met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Misconduct has been established.

DECISION:

The July 1, 2008, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. Inasmuch as no benefits were claimed or paid, no overpayment applies.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css