

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICOLE MOSER
Claimant

APPEAL NO: 12A-UI-02308-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOLSINGER & HAINES LLC
Employer

OC: 01/08/12
Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Nicole Moser (claimant) appealed an unemployment insurance decision dated February 28, 2012, reference 01, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Bolsinger & Haines, LLC (employer) employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 14, 2012. The hearing was consolidated with the parties' permission with the hearings in 12A-UI-01956-BT and 12A-UI-01955-BT. The claimant participated in the hearing with Linda Ludovissy and Nancy Schroeder. The employer participated through Owners Roger and Karen Bolsinger. Employer's Exhibit One 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 claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The employer purchased the business and began operations on February 28, 2011. The claimant was hired at that time as a part-time floral designer/gift clerk. The staff was aware the employer was working with a representative from the small business administration. The owner was learning how to operate this business and was implementing the individual's business suggestions, such as using a time clock and adding surveillance cameras.

The employer did not have a handbook or job descriptions for its employees but was working on them. On January 5, 2012, Co-Owner Karen Bolsinger handed the claimant and her co-employees a type-written job description for "floral design, gift clerk" and she asked the employees to review and sign the document. The job description did not include any job changes but was simply a formalized list of what they had already been doing. The claimant and her co-employees asked Ms. Bolsinger some questions about the document and apparently Ms. Bolsinger became upset; she told the employees to take the document home to review it.

The claimant was concerned about the weight limit and about the policies and procedures, since they were not provided. However, she admitted the job description described everything she had been doing for the last year. The claimant felt she could not sign the job title if she did not know what the policies and procedures were and she did not know what the manager was going to ask of her. On the following morning, Mr. Bolsinger specifically asked her whether she was going to sign the job description and she said no. Consequently, the employer advised her to turn in her keys.

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 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 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 on January 6, 2012 for her refusal to sign the job description. A general rule is refusal to follow reasonable instructions constitutes misconduct. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). However, an employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982).

The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's

reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985). In the case herein, the employer simply wanted the claimant to sign the general job description, which was a summary of what the claimant had been doing since her date of hire. It was not an employment contract, it did not create any new duties and did not have any legal or binding effect on the claimant whatsoever. The employer was following a small business loan representative's advice on the steps to take to create a successful business and the request to sign the job description was entirely reasonable.

On the other hand, the claimant's refusal to sign the job description was due to the fact that she had some questions. It also appears the claimant, along with her co-employees, may have had an unreasonable belief that the employer was trying to dupe her into signing something against her own best interests. The refusal to acknowledge receipt of a written warning by signing it constitutes misconduct. See *Green v. Iowa Department of Job Service*, 299 N.W.2d 651 (Iowa 1980). The administrative law judge considers the same rationale appropriate when an employee refuses to sign a general job description.

The only remaining question is whether or not it makes a difference that the claimant may have been unaware that refusal to sign the job description would result in termination and the administrative law judge concludes it does not. The reason for this is that the claimant could have rescinded her refusal to sign the document at any time and would have continued working. Any indication by the claimant that she would be willing to sign the document would have preserved her job, but her arbitrary refusal to follow this reasonable request is tantamount to insubordination and not a good faith error in judgment. 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 February 28, 2012, 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