

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELIZABETH A FRANCIS NEWBERRY
Claimant

APPEAL NO. 08O-UI-05897-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PLEASANT VALLEY COMMUNITY
SCHOOL DISTRICT**
Employer

**OC: 03/16/08 R: 01
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Pleasant Valley Community School District (Pleasant Valley), filed an appeal from a decision dated April 9, 2008, reference 01. The decision allowed benefits to the claimant, Elizabeth Newberry. After due notice was issued, a hearing was held by telephone conference call on July 22, 2008. The claimant participated on her own behalf. The employer participated by Superintendent James Spelhaug and Chief Financial Officer Mike Clingingsmith.

ISSUE:

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

FINDINGS OF FACT:

Elizabeth Newberry was employed by Pleasant Valley from August 11, 1997 until February 22, 2008 as a full-time district bookkeeper. On August 20, 2007, she received a final written warning regarding her work performance. She was not paying bills to vendors in a timely manner, not getting the monthly financial information to CFO Mike Clingingsmith in enough time for him to prepare the monthly report for the board, not properly filing accounts payable invoices for several months, and not processing purchase orders in a timely manner. The warning notified her that her job was in jeopardy if no improvement was seen.

Ms. Newberry's failure to perform some of these job duties was because she had to depend on others to get the necessary information to her in a timely manner and this was not being done. Invoices and purchase orders had to be signed by various managers and they were not returning them promptly after receiving them. It would require one or two e-mail reminders to the manager to get the documents returned. The financial information for the board had to be sent to her after the statements were reconciled and she could not forward it to Mr. Clingingsmith before they were sent to her, and this caused the delays about which he complained.

When the claimant said she needed some help filing the accounts payable invoices, she was told she could have one of the receptionists do it, but that she would have to go back and personally check that all the filing was done properly. Thus any "help" in this regard did not, in fact, give her more time to do her other job duties.

On February 20, 2008, an in-house auditor discovered that no billing had come from the local newspaper, the Quad City Times. The employer asserted it was the claimant's job to take the list of bills approved for payment at every board meeting, and electronically submit it to the newspaper to be published as required. Ms. Newberry asserted it was not in her job description to do this but she had taken over responsibility for it for a period of time between 2006 and 2007, because the board secretary was forwarding the information to her. Rather than send it back to the board secretary or getting clarification of whether this had become part of her job duties from her supervisor, she did submit it to the newspaper. In February 2007 she decided she no longer had the time to do this and simply stopped submitting the information for publication, but did not notify the board secretary or her supervisor of the situation.

The employer considered her failure to submit this financial report to the newspaper for the past 12 months to be the final precipitating event and discharged her on February 22, 2008, although this particular factor was not mentioned as part of the decision to discharge, only that she was not performing her job duties satisfactorily.

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 employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). In the present case, the claimant has rebutted every one of the assertions of poor work performance mentioned by the employer. The employer did not provide additional testimony or evidence to support its contention, not even asserting that submitting the financial report to the newspaper was, in fact, part of her job duties.

The administrative law judge considers the claimant did not conduct herself very professionally by first of all assuming responsibility for this duty, and then summarily dropping it without notice to anyone. However, the employer did not rebut that it was not in her job description or specifically assigned duties to perform this job.

The employer has not presented sufficient evidence to overcome the claimant's rebuttal and has not met its burden of proof. Disqualification may not be imposed.

DECISION:

The representative's decision of April 9, 2008, reference 01, is affirmed. Elizabeth Francis Newberry is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw