

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISONDRA J SNEDEKER
Claimant

APPEAL NO. 09A-UI-07610-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALS CORNER OIL CO
Employer

**Original Claim: 04/12/09
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 11, 2009, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on June 10, 2009. Claimant participated. Employer participated through Deb Ludwig and Sandy Sorenson. Claimant's Exhibit A was admitted to the record. Employer's Exhibit 1 was received.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked part-time as a cashier and kitchen worker and was separated on April 6, 2009. Sorenson instructed her by telephone to locate and sign a written reprimand on April 5, 2009 for conduct dating back to March 22. Sorenson explained to her she must sign the reprimand even if she disagreed or her failure to do so would be considered insubordination. She also told her she could write whatever she wanted to in response but did not give her a deadline for doing so. Claimant intended to sign the reprimand and write a response as she had in the past at the end of her shift. In the meantime someone moved the reprimand, so she called Sorenson back and notified her she could not find the document. Sorenson told her to keep looking. She searched again, still could not find it, but did not notify Sorenson her additional efforts were unsuccessful. Sorenson found it the next morning on the clip board in the deli. When claimant went in to check her schedule and pick up her check, she noticed her name was crossed off the schedule. She called Sorenson and was told she was fired.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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 of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Failure to sign a written reprimand acknowledging receipt constitutes job misconduct as a matter of law. *Green v IDJS*, 299 N.W.2d 651 (Iowa 1980). *Green* is distinguishable because the employee is clearly informed and knows that by signing the reprimand she was merely acknowledging her receipt of the notice. In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Since no deadline was provided for signing the reprimand, which employer had delayed issuing for two weeks, the claimant's delay of a few days while searching during hours of employment was reasonable. The conduct for which claimant was discharged involved poor communication by the parties and employer has not met its burden of proof. Benefits are allowed.

DECISION:

The May 11, 2009, reference 01, decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw