

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTA M SYKES**  
Claimant

**APPEAL NO. 09A-UI-19006-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NEIGHBORHOOD PATROL INC**  
Employer

**Original Claim: 02/08/09  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Christa Sykes (claimant) appealed a representative's December 16, 2009 decision (reference 04) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Neighborhood Patrol (employer) for conduct not in the best interests of the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 29, 2010. The claimant participated personally. The employer participated by Dick Rogerson, Director of Human Resources, and David Lee, Operations Manager.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**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 hired on February 24, 2009, as a full-time security guard. At the time of her hire, she said she was available to work any shifts but she would be taking some classes. In mid-October 2009, the claimant told the employer she could not work Friday afternoons and Saturday mornings. The claimant was assigned to work at many locations. At each location, she was to be told the rules by the trainer. The claimant was assigned to work at CVS and Farm Bureau. At both locations, the trainer forgot to tell her she could not eat at her desk. Her assignments ended at both locations because she had eaten at the desk and she had a "lackadaisical" attitude. The claimant did not think she was "lackadaisical." The claimant went on to work at other locations.

On November 18, 2009, the employer telephoned the claimant to terminate her. The employer terminated the claimant because he had no work for her, she had eaten at the desk, was "lackadaisical" at two assignments, and she restricted her availability in October 2009.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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 employer must establish not only misconduct but that there was a final incident of misconduct that precipitated the discharge. The employer did not provide dates of incidents within a few days of the claimant's termination. The employer was not able to provide any evidence of a final incident of misconduct. The employer has failed to provide any evidence of willful and deliberate misconduct that would be a final incident leading to the discharge. The claimant was discharged, but there was no misconduct.

**DECISION:**

The representative's December 16, 2009 decision (reference 04) is reversed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/kjw