

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEATHER C JOHNSON
Claimant

APPEAL NO. 12A-UI-00653-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ARAG NORTH AMERICA INC
Employer

OC: 08/28/11
Claimant: Appellant (2/R)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Heather Johnson (claimant) appealed a representative's January 3, 2012 decision (reference 04) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Arag North America (employer) for dishonesty in connection with her work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 14, 2012. The claimant participated personally. The employer participated by Erin Barfels, Chief Human Resources Officer.

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 considered all of the evidence in the record, finds that: The claimant was hired on October 24, 2011, as a full-time provider relations special referral specialist. When the claimant had her interview and completed her application for unemployment on September 9, 2011, she led the employer to believe she was currently employed with Coventry. She was separated from employment with Coventry on August 28, 2011. She certified that her answers were true and correct.

On November 15, 2011, the employer learned that at the time the claimant completed the application for hire and had her interview, she had been terminated by Coventry. The employer would have hired the claimant had she been truthful. The claimant admitted she had filled out the application incorrectly because she thought she would not be hired if the employer knew she had been terminated by Coventry. The employer terminated the claimant on December 8, 2011, for misrepresentation on her application form.

During the claimant's testimony she stated that she reported to Iowa Workforce Development for the two week period ending November 5, 2011, that she was able and available for work when she was working for the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

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.

871 IAC 24.32(6) provides:

(6) False work application. When a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy, such falsification shall be an act of misconduct in connection with the employer.

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 which precipitated the discharge. The employer provided an incident that occurred on September 9, 2011, and discovered on November 15, 2011, as a final incident of misconduct. In the present case, the employer may legitimately have been concerned about the claimant's inaccuracy on her application. While understanding the concerns of the employer, the judge does not believe it has established that falsification of the application could have exposed it or its workers to harm or liability sufficient to warrant a disqualification of unemployment benefits. In addition, the employer did not give adequate reason for failing to terminate until December 8, 2011. The employer did not provide sufficient evidence of a job-related final incident of misconduct close in time to the termination. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

The issue of whether the claimant was able and available for work after her separation from Coventry in August 2011, is remanded for determination.

DECISION:

The representative's January 3, 2012 decision (reference 04) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed. The issue of whether the claimant was able and available for work after her separation from Coventry in August 2011, is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs