

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NOEMI CASTRO**  
Claimant

**APPEAL NO. 11A-UI-10249-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE CRITTENTON CENTER**  
Employer

**OC: 07/03/11**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated July 27, 2011, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 29, 2011. The claimant participated. The claimant was represented by Dennis McElwain, attorney at law. The employer participated by Barb Work, human resources manager. The record consists of the testimony of Barb Work and the testimony of Noemi Castro.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer provides social services such as maternal health and parenting assistance. The claimant worked as a Spanish translator. She began working for the employer on August 3, 2004. Her last day of work was July 7, 2011. She was terminated on July 7, 2011, for what the employer concluded was falsification of mileage records.

The employer administers at least three different programs. The claimant worked at the maternal health center and had her main office at West Side Resource Center, which is located in a school in Sioux City. In addition, the claimant worked as a translator for a program called HOPES, which provides parenting assistance. The claimant's job required her to travel between job sites and also to homes where assistance was being provided. The claimant was paid mileage for work-related travel.

The claimant submitted mileage reimbursement requests for the months of May 2011 and June 2011 at the end of June 2011. The claimant's supervisor was concerned because the claimant requested reimbursement for 266 miles under the HOPES program. This number of miles was more than the individuals who actually did the HOPES training and assistance. The human resources manager, Barb Work, investigated the claimant's mileage and discovered that

the claimant was requesting mileage from the West Side Resource Center to the home and then back to the West Side Resource Center. Ms. Work concluded that the claimant was overstating her mileage because she was traveling from home to home and not returning to the West Side Resource Center. Ms. Work based this conclusion on the fact that the claimant had not “fobbed in” at the West Side Resource Center. Ms. Work was unable to quantify the number of miles she felt had been improperly reported by the claimant.

The employer has a written policy, of which the claimant was aware, that falsification of records could lead to immediate termination. There was no specified method on how mileage was to be computed. The claimant had used the same method to report mileage during the time she had been employed.

#### **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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. One of the most fundamental duties owed to the employer is honesty. An employer can reasonably expect that a claimant will not seek reimbursement for expenses that were not incurred. The employer has the burden of proof to establish misconduct.

In this case, the difficult issue is whether the claimant sought reimbursement for miles that she did not actually travel when performing her job. The employer reviewed four months of mileage reimbursement requests and felt that there was a discrepancy on how the claimant was reporting mileage in connection with the HOPES program. The employer believed that the claimant was charging for miles to each home from the office and back, when in reality she traveled from home to home. The claimant insisted that she reported her mileage consistently during the time she worked for the employer and that she had never been told that she was doing it incorrectly.

The administrative law judge has some reservations about the credibility of the claimant's testimony, particularly since she testified that she did not know what mileage she had reported incorrectly. Ms. Work testified that she showed the claimant where the employer felt the discrepancy occurred. Nevertheless, the employer was unable to quantify exactly how much mileage was overstated. Ms. Work conceded that there was no uniform policy on how mileage was to be reported. The claimant testified that she had reported her mileage in the same manner since the HOPES program began approximately five years ago. Given these facts, the administrative law judge has insufficient evidence to conclude that the claimant deliberately and knowingly overstated her mileage. There may have been an overstatement, but the employer has failed to show that the claimant intended to deceive the employer and claim mileage expenses to which she was not entitled.

Since there is insufficient evidence of misconduct, benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated July 27, 2011, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

---

Vicki L. Seeck  
Administrative Law Judge

---

Decision Dated and Mailed

vls/kjw