

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY J MACIEJEWSKI
Claimant

APPEAL NO. 12A-UI-06048-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

INTRUST
Employer

OC: 04/15/12
Claimant: Respondent (1-R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Intrust filed a timely appeal from a representative's decision dated May 16, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on June 18, 2012. Claimant participated. The employer participated by Mr. Nick Malcolm, Human Resource Manager.

ISSUE:

The issue is whether the claimant was dismissed from work under disqualifying conditions.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Mary Maciejewski was employed by Intrust as a full-time home health assistant from November 13, 2006 until April 14, 2012 when she was dismissed because the company had eliminated the claimant's position.

Ms. Maciejewski was informed on March 7, 2012 that Intrust planned on discontinuing its home health care services and that the claimant's employment with Intrust would come to an end on April 14, 2012. Ms. Maciejewski worked until the completion of work that was available to her.

The claimant was informed of a possibility of beginning employment with "Trucare" the company that was replacing Intrust in home health services. Individuals that were employed by Intrust were urged to make application with Trucare. It appears that Trucare had simplified the application process by requiring only background checks, physical examination, and drug tests for clients who had previously been employed by Intrust. Ms. Maciejewski declined to apply with the new company.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant was dismissed from work under disqualifying conditions. It does not.

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 in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Conduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000).

The evidence in this case establishes that the claimant's job separation took place when Ms. Maciejewski was dismissed on April 14, 2012 when the employer discontinued its home health care services. Claimant had engaged in no disqualifying misconduct and was separated at and for the convenience of the employer at that time. Benefits are allowed, providing the claimant is otherwise eligible.

The issue of whether the claimant may have refused an offer of suitable work is remanded to the UIS Division for investigation and the issuance of an appealable determination.

DECISION:

The representative's decision dated May 16, 2012, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs