

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANOA L LEMKE
Claimant

APPEAL NO. 11A-UI-05027-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPHERION STAFFING LLC
Employer

OC: 03/20/11
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 12, 2011 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on May 11, 2011. Claimant participated with temporary assignment seeker Diane Ford. Employer participated through branch manager Kelly Harris.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of 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 full-time as a client service supervisor in the Spherion office from March 22, 2010 and was separated from employment on March 22, 2011. An audit revealed that she sent an employee on an assignment on March 11 without being hired in the employer's system until March 14 and e-verify from the Department of Homeland Security was not issued. On September 13, 2010 employer issued a verbal warning about not conducting a background check for the client. A February 8, 2011 written warning was issued on February 24 after placing an employee on a job without complete e-verify and internal hiring forms. On March 1 employer issued a final written warning for sending employees to work without completion of internal hiring forms and running a background check and e-verify.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

Claimant's repeated failure to process hiring documentation on a timely basis after having been warned is evidence of carelessness to such a degree of recurrence as to rise to the level of disqualifying job related misconduct. Benefits are denied.

DECISION:

The April 12, 2011 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has

worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs