

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA J HALE
Claimant

APPEAL NO. 10A-UI-01330-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OTTUMWA REGIONAL HEALTH CTR INC
Employer

**Original Claim: 12/27/09
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The employer appealed a department decision dated January 22, 2010, reference 01, that held the claimant was not discharged for misconduct on December 23, 2009, and that allowed benefits. A telephone hearing was held on March 1, 2010. The claimant participated. Janey Huston, Employment Coordinator, and Stacy Munson, Food Service Director, participated for the employer. Employer Exhibits One through Four were received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began employment as a full-time food service worker on December 6, 1977, and last worked for the employer on December 23, 2009. During the last two years, the employer began placing a greater emphasis on employee behavior at the work place. Stacy Munson became food service director in about March 2009.

As Munson was preparing for claimant's annual review in December, she noted the claimant had failed to log her cleaning assignments for the month. Munson received a report from a shift leader that claimant failed to pre-mix a cup of Crystal Light for a patient who requested it. Munson discharged the claimant for these incidents in light of counsel reports she had issued on August 21, September 17, and December 3, 2009.

The claimant acknowledged the December 23 assignment, which she planned on doing at the time the tray-line was served. As to the December 3 counseling, the claimant denied she was the employee requested to warm the apple crisp, and although the written warning references probation, it does not state a further incident will result in discharge. As to the September 17 report, the claimant denies she slid a trash can at Munson; and as to the August 21 report, she denies using inappropriate language in the kitchen area.

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.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on December 23, 2009.

The main employer witness (Munson) did not have personal knowledge of the incidents relied upon for counseling reports (except September 17) and lacked specific information about the occurrences. The most recent warning did not put the claimant on notice that a further incident would mean termination. Given that claimant was a 32-year employee, the incidents are relative minor when considering the length of employment. It appears the employer was placing an emphasis on employee behavior in discharging the claimant, but being a disgruntled employee is not, per se, misconduct.

DECISION:

The department decision dated January 22, 2010, reference 01, is affirmed. The claimant was not discharged for misconduct on December 23, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw