

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LAURA A HILL**  
Claimant

**APPEAL NO. 09A-UI-17216-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LABOR READY MIDWEST INC**  
Employer

**OC: 01/18/09**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the November 2, 2009 (reference 04) decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on December 22, 2009. Claimant participated. Employer participated through multi-branch manager, Jessica Spinello. Claimant's Exhibit A was admitted to the record.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant worked as a day laborer for the employer and was discharged on October 1, 2009 after employer accused her of reporting to work intoxicated on September 28. On that date claimant was experiencing a gallstone spasm and was treated in the emergency room so she did not return later in the day. The emergency room instructions make no reference to her being intoxicated. (Claimant's Exhibit A) The employer listed a series of observations that led her to believe claimant was intoxicated but did not mention the smell of alcohol on claimant and did not require a drug screen or otherwise contact police to handle the matter.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The employer has not established that claimant was intoxicated or that her behavior was related to anything more than pain related to the gallstone spasm. Benefits are allowed.

**DECISION:**

The November 2, 2009 (reference 04) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

---

Dévon M. Lewis  
Administrative Law Judge

---

Decision Dated and Mailed

dml/css