

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GAYLEEN K BECK

Claimant

LUTHERAN SERVICES IN IOWA INC

Employer

APPEAL NO: 13A-UI-06735-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/12/13

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant appealed a department decision dated May 31, 2013, reference 01, that held he was discharged for misconduct on May 8, 2013, and benefits are denied. A telephone hearing was held on July 9, 2013. The claimant participated. Kirk Finck, Homes Care Services Director, participated for the employer.

ISSUE:

Whether claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on June 27, 2008, and last worked for the employer as a full time home health aide at Rose of Des Moines facility on May 7, 2013. The employer watched a Rose video security tape that showed claimant entering and exiting a cleaning closet with a backpack. She left the facility, went to her car parked in a nearby lot, and left her backpack in it.

When confronted by the security video, claimant admitted taking some cleaning supplies and garbage bags from the Rose facility. She was discharged on May 8 for theft of client property.

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 employer established claimant was discharged for misconduct on May 8, 2013 for theft of client property.

Employee honesty is a standard of behavior the employer has a right to expect. While claimant was having some personal issues, she admits she knew it was wrong to take the property. Theft of property whether from the employer or its client constitutes job disqualifying misconduct.

DECISION:

The department decision dated May 31, 2013, reference 01, is affirmed. The claimant was discharged for misconduct on May 8, 2013. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs