

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TERRY MANN**  
Claimant

**APPEAL NO. 09A-UI-06294-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PETSMART INC**  
Employer

**Original Claim: 12-28-08  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the April 17, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 14, 2009. The claimant participated in the hearing with Representative Richard Sturgeon. Shawn Kempfe, Operations Manager, and Matt Boos, Store Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time bather for Petsmart from January 26, 2009 to March 26, 2009. On March 25, 2009, the claimant went to the employer's establishment to bathe her dog on her day off. The salon portion of the store was closed. The claimant was in the bathing area bathing her dog when she suddenly had to go to the bathroom. She suffers from a medical condition that causes incontinence. She has had surgeries to correct the problem but it persists, and she usually controls it with medication, but has to go through the VA, which is slow in filling her prescription, and she had been out for two weeks. The dog she was bathing is a special needs dog and cannot be kenneled. The claimant looked for someone to watch the dog but there was no one in the area. She tried to quickly dry the dog and tether it but when she finished it was too late for her to run across the main store to the restroom on the other side of the store. There was a drain right there for the bath water to run down so the claimant used that rather than wet her pants trying to get to the restroom. Just as she was standing up and buttoning her pants, Operations Manager Shawn Kempfe came in and the claimant told her what happened. She told Ms. Kempfe about her medical condition and said she could bring a doctor's letter about her condition, but the employer said it did not matter. The claimant asked if it would have been better for her to go through the store in soaking wet pants and Ms. Kempfe said yes. Ms. Kempfe left the area and called the store manager and he told her to call human resources and the district manager. After considering the situation, the employer decided to terminate the claimant's employment.

## REASONING AND CONCLUSIONS OF LAW:

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

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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). The claimant has a medical condition that causes her to have to use a restroom almost immediately when she has to urinate or she will wet her pants. It is usually controlled by medication, but she was out of her medication at the time this incident occurred. Consequently, she used the drain in the empty and closed salon where the water runs from washing the dogs. While it obviously was not an ideal situation, the claimant had no choice but to use the drain or wet her pants. Even though the employer believes she should have wet her pants if she could not make it to the restroom, the claimant was placed in the untenable position of having to make a quick decision and did not believe she could make it to the restroom across the store and understandably did not wish to wet her pants. She did clean and disinfect the area, apologize to the employer, and explain

her medical condition, but none of that had any impact on the employer's decision to terminate her employment. Under these circumstances, the administrative law judge cannot conclude that the claimant's actions were intentional misconduct as defined by Iowa law. Therefore, benefits are allowed.

**DECISION:**

The April 17, 2009, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw