

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMANTHA PIERCE
Claimant

APPEAL NO: 07A-UI-10968-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

JERRY DEN HERDER, DVM
Employer

**OC: 10-28-07 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 20, 2007, 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 December 12, 2007. The claimant participated in the hearing with witness Jeana Csukker, Veterinary Technician. Kathy McFarland, Office Manager, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

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 veterinary assistant for Jerry Den Herder, DVM, from November 2004 to October 31, 2007. Three to four weeks prior to the termination date the claimant brought breakfast in from McDonalds and proceeded to eat in the lab. The employer had a rule prohibiting employees from eating in the lab and especially objected to them eating fast food in the animal hospital building because of the odor. The office manager and owner did not work on Thursdays and this situation occurred on a Thursday. The claimant testified she knew she was not supposed to eat in the lab but it was a common occurrence on Thursdays when the office manager and owner were not there because they knew they "could get away with it." The lab supervisor asked the claimant to go to the other building to eat and do lab cultures and the employer was not notified of the situation until two to three weeks later. After discussing the incident with the owner the employer terminated the claimant's employment. It also testified that the claimant failed to help the doctors in a timely manner, was tardy one to three times per month and failed to follow the rules but could not give any specific examples with the exception of two incidents of tardiness and eating in the lab. The claimant did not receive any formal warnings during her employment but the employer talked to her on several occasions and told her to "act like boss is here all the time," demonstrate a "Faster response to doctors. Be available for help or call for backup" and "Take more initiative in helping doctors. Don't wait to be told what to do" (Employer's Exhibit One).

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 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.

While the issue of helping the doctors in a timely manner was not substantiated in the employer's testimony, the claimant did confirm the tardiness. Those two issues alone, without warnings, however, would probably not constitute disqualifying job misconduct as defined by Iowa law. The remaining issue is the claimant's practice of eating in the lab on Thursdays when the office manager and owner were not working. The claimant admitted she was aware of the policy prohibiting employees from eating in the lab but chose to ignore the policy on Thursdays when the office manager and owner were out of the office. Although the claimant and her witness testified that the last incident occurred three to four weeks prior to the termination, the employer took action when it learned of the situation. The claimant's behavior shows a pattern of a knowing, willful and deliberate violation of the employer's policy and it is disturbing that she chose to violate the policy when she knew she "could get away with it." The administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to

the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits must be denied.

DECISION:

The November 20, 2007, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs