

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 06A-UI-06332-S2T
OC: 05/21/06 R: 01
Claimant: Respondent (5)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Belle Touche' (employer) appealed a representative's June 12, 2006 decision (reference 02) that concluded Tracy Sampson (claimant) voluntarily quit due to a change in the contract for hire. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 11, 2006. The claimant was represented by Scott Rhinehart, Attorney at Law, and participated personally. The employer was represented by Frank Cosgrove, Attorney at Law, and participated by Lisa Pfeifle, Liaison. The employer offered two exhibits which were marked for identification as Exhibits One and Two. Exhibits One and Two were received into evidence.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: The claimant worked for the employer as a licensed nail technician from July 1, 2004 until May 15, 2006. The claimant signed Confidentiality and Non-Competition Agreements with the employer in July 2004 and on April 4, 2005. The claimant did not know why she needed to sign subsequent Agreements because the Agreements did not expire. The Agreements indicated that the claimant agrees not to "call upon, solicit, divert, or take away business from any past or current customer or client of the Company."

In March 2006, the employer issued the claimant a new Confidentiality and Non-Competition Agreement. The new Agreement had slightly different language. The new Agreement indicated that the claimant would agree not to "call upon, solicit, divert, take away or accept business from any past or current customer or client of Company." The claimant took the new Agreement to legal counsel who advised her not to sign. The claimant felt that should she separate from the employer, the Agreement would be too restrictive and would require her to question each potential customer to avoid liability.

In May 2006, the employer told the claimant she had until May 15, 2006 to sign the contract. The claimant expressed her concerns. On May 15, 2006, the employer told the claimant there had been no language change and the claimant did not have a job with the employer because she failed to sign the new agreement. No warnings were issued to the claimant during her employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes she was not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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). The employer discharged the claimant and has the burden of proof to show misconduct. An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. Woods v. Iowa Department of Job Service, 327 N.W.2d 768, 771 (Iowa 1982). The claimant's failure to sign the new Agreement did not constitute misconduct because she had good cause not to sign it. The employer ignored the claimant's concerns and terminated her employment. The employer did not provide any evidence of misconduct at the hearing. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's June 12, 2006 decision (reference 02) is modified with no effect. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible

bas/cs