

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LINDA GFELLER**  
Claimant

**APPEAL NO. 12A-UI-01775-WT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**4 PAWS UNLEASHED INC**  
Employer

**OC: 01/08/12**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Employer filed an appeal from a fact-finding decision dated February 13, 2012, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 8, 2012. Claimant participated personally. Employer participated by Corrine Pribe and Cory Hendrickson.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds the following facts. Claimant last worked for employer in March 2009. She was a dog groomer. Her daughter, Dlynn was her main coworker/groomer. Claimant was discharged on January 11, 2012 for alleged insubordination. On January 9, 2012, the employer met with the claimant to discuss some work issues. Ms. Pribe, the owner/manager of the business became frustrated. During that meeting, Ms. Gfeller shook her finger at Ms. Pribe and stated something like the following: "We know a lot of people in this city and we have referred a lot to this business and I demand your respect for that."

At hearing, the employer alleged that Amber, the supervisor at the Clive facility, was intimidated by claimant and her daughter. She also alleged that co-workers had made complaints about the claimant. She acknowledged that the claimant was not confronted about these issues prior to termination.

**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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct. The actions described by the employer at hearing do not amount to insubordination. Moreover, it is apparent that claimant's refusal to modify her work hours was a substantial basis for the termination as well. Claimant was not warned concerning her conduct.

**DECISION:**

The fact-finding decision dated February 13, 2012, reference 01, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Joseph L. Walsh  
Administrative Law Judge

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Decision Dated and Mailed

jlw/css