

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BESIMA OSMICEVIC
Claimant

APPEAL NO. 08A-UI-03181-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HAWKEYE HEALTH SERVICES INC
Employer

**OC: 03/02/08 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated March 24, 2008, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on April 15, 2008. The claimant participated. Participating as witnesses were Senada Kolupcic and Suada Jasarevic. The employer participated by Brianna Braden and Shelly Brey. Employer's Exhibits One, Two, and Three and Claimant's Exhibits A through P were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with her work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from January 14, 2003, until March 3, 2008, when she was discharged from employment. The claimant most recently held the position of a part-time home health aide worker and was paid by the hour.

The claimant was discharged from her employment with Hawkeye Health Services, Inc., after the employer believed that the claimant had misreported working hours on February 14, 2008. On that date, the claimant had also met with her supervisor to review her annual performance evaluation. Based upon the reported times of home health visits on the timesheet in question, the employer believed that the claimant had either misreported her work or had made a mistake. The employer investigated and determined that the incident was "an isolated instance" and that there had been no previous instances where Ms. Osmicevic had misreported her time. Because the misreporting may have had further consequences if it had not been subsequently reported, a decision was made to terminate Ms. Osmicevic from her employment.

The claimant had previously brought to the attention of the organization and other government institutions her concerns about the manner in which she had been treated by her supervisor and also had reported misgivings about employer practices.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes the claimant was discharged for intentional disqualifying misconduct in connection with her work. It does not.

The evidence in the record establishes that friction had developed between the claimant and her immediate supervisor regarding the manner in which the claimant perceived that she had been treated by her supervisor. The evidence also establishes that Ms. Osmicevic had concern about employer practices and had brought the concerns to the attention of the company, as well as other governmental entities. The claimant was discharged based upon a single incident of misreporting her time on one workday. Although the administrative law judge is cognizant that intentional misreporting of hours is a violation of company policy and also might have subjected the company to sanctions from governing bodies if the report had been forwarded with the knowledge of the employer of improprieties, the evidence establishes that the employer caught the discrepancies. Based upon the evidence in the record, the administrative law judge concludes that any errors or omissions on the timecard in question were the result of an isolated instance of poor judgment or mistake and not due to intentional acts on the part of the claimant to defraud the employer or the funding governmental institutions.

The question before the administrative law judge is not whether the employer has a right to discharge an employee for this reason, but whether the discharge is disqualifying under the provisions of the Iowa Employment Security Act. While the decision to terminate Ms. Osmicevic may have been a sound decision from a management viewpoint, the administrative law judge concludes that the claimant's conduct did not rise to the level of intentional disqualifying misconduct. Therefore, benefits are allowed.

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.

For the reasons stated herein, the administrative law judge concludes that the claimant was discharged under non-disqualifying conditions.

DECISION:

The representative's decision dated March 24, 2008, reference 01, is hereby affirmed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw