

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

COURTNEY D MTAYARI
Claimant

APPEAL NO: 11A-UI-09991-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST PROFESSIONAL STAFFING LLC
Employer

**OC: 06/26/11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The employer appealed a department decision dated July 25, 2011, reference 02, that held the claimant was not discharged for misconduct on May 21, 2010, and benefits are allowed. A telephone hearing was held on August 22, 2011. The claimant participated. Jason Harpenau, Staffing Specialist, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on assignment at Praxair Distributing on May 3, 2010, and last worked for the employer as a full-time collections specialist about May 20, 2010. She called her supervisor twice and left messages on the morning of May 21 that she would be missing work due to her son being ill. Later that day, she spoke with an employer representative who told claimant she was terminated for being a no-call, no-show to work for failing to contact it about the absence.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on May 21, 2010.

Regardless of the employer policy, a single incident of claimant missing work whether the employer client did or did not receive notice does not disqualify the claimant and is not job disqualifying misconduct.

DECISION:

The department decision dated July 25, 2011, reference 02, is affirmed. The claimant was not discharged for misconduct on May 21, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs