

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIE STICHLER
Claimant

APPEAL NO: 07A-UI-06865-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOSAIC
Employer

OC: 06-17-07 R: 01
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 3, 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 July 30, 2007. The claimant participated in the hearing with witness Kathy Stuhr. Jim Poehman, Executive Director; Mary Arndt, Human Resource Manager; and Attorney Lynn Corbeil, participated in the hearing on behalf of the employer. Employer's Exhibits One, Two and Three were 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 direct support manager for Mosaic from August 22, 2000 to May 24, 2007. On May 17, 2007, an employee reported that the claimant took oxygen home. Human Resource Manager Mary Arndt spoke to several employees who all reported the claimant had taken oxygen home and the employer suspended the claimant May 18, 2007, pending further investigation (Employer's Exhibit Two). On May 21, 2007, Ms. Arndt met with the claimant and she provided a written statement that she took five or six tanks of oxygen March 26, 2007, for her boyfriend because he was having trouble breathing (Employer's Exhibit One). The employer terminated her employment May 24, 2007, for taking company property (Employer's Exhibit Three).

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 claimant does not believe her actions constitute theft, she took five or six oxygen tanks intended for a resident from the employer's premises. The employer has a responsibility to insure that items paid for by Medicaid are used for their intended clients or it could face a loss of its license and charges of Medicaid fraud. Although the claimant's boyfriend may also have been on Medicaid it is not acceptable to substitute one patient's health aids for another's. Additionally, the claimant used the employer's equipment for a personal medical issue and it is not the employer's responsibility to provide for her boyfriend's medical care simply because he is too stubborn to seek treatment. This action did occur in March 2007. However, the employer took immediate action upon learning of the incident and therefore it can be considered a current act of misconduct. Consequently, 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). Benefits are denied.

DECISION:

The July 3, 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