

**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**

**SHARON J WIXOM  
2019 SUNNYSIDE AVE  
BURLINGTON IA 52601-2532**

**HOPE HAVEN AREA DEVELOPMENT  
CENTER CORPORATION  
1819 DOUGLAS AVE  
BURLINGTON IA 52601**

**Appeal Number: 06A-UI-02403-S2T  
OC: 02/05/06 R: 04  
Claimant: Appellant (1)**

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Sally Wixom (claimant) appealed a representative's February 22, 2006 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Hope Haven Area Development Center (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 17, 2006. The claimant participated personally. The employer participated by Dan Smith, Director of Human Resources , and Sally Maus, Unit Administrator at Northwood Group Home.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 17, 2005, as a full-time overnight aid. She knew at the time she was hired that she had to appear for various training sessions. After being hired, the claimant was sponsored to take Certified Nursing Assistant Classes on Tuesdays and Thursdays, 8:00 a.m. to 3:30 p.m., December 6, 2005, to January 19, 2006.

The community college scheduled Certified Medication Manager training for three days beginning December 5, 2005. The College had to cancel the training and reschedule it for January 4, 2006. The claimant told the employer that the rescheduled date would be better for her.

The employer scheduled mandatory Adult Abuse Training on Wednesday, December 28, 2005. The claimant did not appear for the training because she had a previously scheduled appointment. The employer verbally warned the claimant about her failure to attend mandatory training.

On January 3, 2006, the employer telephoned the claimant to remind her of the training on January 4, 5 and 6, 2006. The claimant told the employer she could not go because she had classes. The employer informed the claimant she must attend the mandatory training or she was terminated. The claimant refused to attend. The employer terminated the claimant.

#### 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.

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). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of her work. The claimant disregarded the employer's right by repeatedly failing to follow instructions concerning mandatory attendance at classes. The claimant's disregard of the employer's interests is misconduct. As such, she is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's January 22, 2006 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

bas/s