

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTINE A INGRAM

Claimant

APPEAL NO. 09A-UI-05710-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SELECT MEDICAL CORPORATION

Employer

OC: 03/08/09

Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated March 26, 2009, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 23, 2009. Claimant participated personally. Employer participated by Kim Sojka, Director of Business Development; Michelle Krieger, Lead Therapist and Sara Busha, Human Resource Coordinator. Exhibit One was admitted into evidence.

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: Claimant last worked for employer on March 3, 2009.

Claimant was discharged on March 6, 2009 by employer because claimant allegedly failed to finish an Excel spreadsheet in one day and complete a Kronos report before noon. Claimant was also let go because she violated the company email policy by sending a personal email to a coworker on March 3, 2009. Claimant had no formal warning for violation of the company email policy. Claimant had no formal warning for poor work performance. Employer has a three step policy before bringing about discharge. Employer usually gives a verbal, written and suspension prior to discharge. Claimant did complete the kronos report before noon as instructed. Claimant was assigned to complete the spread sheet on March 3, 2009. Claimant did not have it finished by the end of the day March 4, 2009. Claimant did not know she needed to finish the job in one day. Claimant was performing the work to the best of her ability as she was not accomplished in the excel program. Claimant was then called in and discharged for failing to finish the jobs on time. Claimant had a verbal warning on her record for absenteeism and personal phone calls.

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.

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 when claimant violated employer's policy concerning work performance. Claimant was not warned concerning this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because claimant did not intentionally violate a directive. Claimant did not know she needed to finish the spread sheet job in one day. Claimant was performing the work to the best of her ability. Claimant did complete the kronos sheet in the time allowed. This is not carelessness or an

intentional policy violation. The lack of a formal warning detracts from a finding of an intentional policy violation. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated March 26, 2009, reference 01, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs