

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LORI WEAVER**  
Claimant

**APPEAL NO. 06A-UI-09894-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ANIMAL RESCUE LEAGUE OF IOWA INC**  
Employer

**OC: 09-03-06 R: 02**  
**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 27, 2006, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 24, 2006. The claimant participated in the hearing. Sheila Shiler, Client Relationship Administrator for Merit Resources and Stephen Storm, Animal Care Tech Supervisor, participated in the hearing on behalf of the employer. Employer's Exhibits One through Five 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: A disqualification decision was mailed to the employer's last-known address of record on September 27, 2006. The employer received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by October 7, 2006. That date fell on a Saturday followed by a Monday holiday so the appeal was due October 10, 2006. The appeal was filed October 10, 2006, which is the due date of the appeal. Consequently, the administrative law judge concludes the appeal is timely.

The claimant was employed as a full-time animal care tech for Animal Rescue League of Iowa from May 29, 2004 to September 6, 2006. She was discharged for neglecting her cleaning duties. On October 26, 2006, she received a written counseling because the garbage was not taken out; there was "nasty" water left in the dish sink and a deep layer of litter at the bottom of the sink. The counseling stated, "All of the dishes should be washed up and sinks emptied and disinfected before leaving at night. Dishes should all be put away and the drip-dry area disinfected also (Employer's Exhibit One). The counseling also stated that "All cages and kennels should be double checked for water and food. There were two kennels of dogs without food last night. This is neglect and will not be tolerated" (Employer's Exhibit One). The counseling further stated, "There were some kennels with feces in them. All kennels must be free of feces and urine before leaving the building at the end of your shift" (Employer's Exhibit One). The claimant signed the warning. On March 28, 2006, the claimant was responsible for

the large and small animal controls, the small side of the stray area and the cat isolation area. The employer was short-handed on care techs in the adoption area so all employees were expected to help clean the adoption area before 11:00 a.m. but the claimant failed to do so (Employer's Exhibit Two). When the cat isolation area had not been cleaned by 5:00 p.m. another employee cleaned it but the claimant did not provide a reason for not performing the cleaning and was issued a written warning (Employer's Exhibit Two). The claimant signed the warning but wrote that she had not been trained and was doing the best she could (Employer's Exhibit Two). Stephen Storm, Animal Care Tech Supervisor, responded to the claimant's comments about training by noting the claimant had been with the employer for nearly two years and would not have been able to act capably in her capacity as an animal care tech had she not been properly trained in the cleaning and care of the animals (Employer's Exhibit Two). On June 14, 2006, the claimant received a written warning for allowing a volunteer to walk a "green sticker" or aggressive dog. The claimant had been told the volunteers could "absolutely not" walk the green stickers and the employer warned the claimant for showing a "blatant disregard for the directive that was given to her" (Employer's Exhibit Three). The warning was not signed until July 11, 2006, because the volunteer was in the hospital for other reasons and did not speak to the employer until she returned to work July 10, 2006. On September 3, 2006, the claimant was warned about neglecting her cleaning duties after she failed to perform her assigned cleaning tasks and other employees had to clean her areas for her (Employer's Exhibit Four). When another employee confronted her about the situation the claimant began crying and banged cage doors (Employer's Exhibit Four). The warning stated that the claimant is "unable to remain on task and complete her required duties in a timely manner" (Employer's Exhibit Four). Under the employer's policy the claimant's employment was terminated for the third policy violation. The claimant admitted she cleaned more slowly than others but testified she was given much more work beginning in June 2006. She also stated she would never abuse or neglect an animal.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

#### **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.

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).

While it appears the claimant did care for animals and did not intentionally abuse any animal, her failure to clean the cages amounts to neglect and violated the employer's policy. The claimant had been warned about her cleaning performance, failure to perform work requested by the employer and violating a safety rule or practice or creating or contributing to unsafe, unhealthy, or unsanitary conditions. 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 September 27, 2006, reference 01, decision is reversed. The employer's appeal is timely. 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. The claimant is overpaid benefits in the amount of \$1,226.00.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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