

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARISSA C LEIBOLD
Claimant

APPEAL NO. 12A-UI-01493-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**“B & D HEARING & AIR CONDITIONING
INC**
Employer

**OC: 12/18/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative’s decision dated February 1, 2012, reference 05, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on March 5, 2012. Claimant participated. The employer participated by Mr. Bruce Shakespeare, Company President.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Marissa Leibold was employed by B & D Heating & Air Conditioning, Inc. from February 4, 2011 until she was discharged from employment on December 20, 2011. Ms. Leibold worked as a full-time secretary/receptionist and was paid by the hour. Her immediate supervisor was the company president, Bruce Shakespeare.

Ms. Leibold was discharged from her employment with B & D Heating & Air Conditioning, Inc. on December 20, 2011 when the employer reasonably concluded that the claimant had intended to misappropriate a rebate check for company purchases. The company president had opened the mail and noticed that the rebate check in question had been made out to Ms. Leibold personally. A further inquiry with the vendor disclosed that the claimant had provided that information to the company and the claimant had also used her personal e:mail account instead of the company’s account as required. The claimant had previously been warned and suspended for an approximate one-week period based upon what the employer reasonably considered to be her intentional falsification of working hours. Claimant was informed at that time that any further dishonesty in the performance of her duties would result in her termination from employment. Another factor that entered into the employer’s decision to terminate Ms. Leibold was because the claimant had consumed an alcoholic beverage or beverages at a company holiday gathering. The claimant who was underage had been

specifically informed that the company was providing soft drinks for her consumption and the consumption of other individuals who could not consume alcoholic beverages.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 employer has the burden of proof in this matter. See Iowa Code § 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

The evidence in the record establishes that Ms. Leibold had repeatedly engaged in questionable time reporting and had been specifically warned by her employer that further acts of dishonesty could result in her termination from employment. The claimant was discharged after she consumed alcoholic beverages at a company holiday gathering although she was underage and because the employer had reasonably concluded that the claimant had potentially attempted to misappropriate a rebate check for a company purchase. Based upon the employer's

investigation, the employer was reasonable in concluding that the claimant had intentionally identified herself as the recipient of the rebate when she was not authorized to do so.

The claimant's ongoing dishonesty with her employer showed a willful disregard for the employer's interests and reasonable standards of behavior that the company had of its employees under the provisions of the Employment Security Law. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated February 1, 2012, reference 05, is affirmed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs