

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEATHER L MORENO
Claimant

APPEAL NO. 10A-UI-05725-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

REGIS CORP
Employer

**Original Claim: 03/21/10
Claimant: Appellant (2)**

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated April 15, 2010, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 3, 2010. The claimant participated. The employer participated by Lisa Bagdonas, area supervisor. The employer was represented by Steve Zaks. The record consists of the testimony of Lisa Bagdonas; the testimony of Heather Moreno; and Employer's Exhibits 1 through 2.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a Cost Cutters hair salon located in Davenport, Iowa. The claimant was initially hired on December 15, 2003. On the date of her termination, March 19, 2010, the claimant was the salon manager.

The event that led to the claimant's termination occurred on March 13, 2010. The claimant was not "on the clock" but was in the salon. She gave a haircut to her boyfriend. He asked if he had to pay for the haircut and she said no. He then gave her a ten dollar bill, which she put in her pocket. Another stylist informed the area supervisor, Lisa Bagdonas, about the claimant's actions. Ms. Bagdonas concluded that the claimant had violated several written policies, including falsification of company records and rendering free services without authorization. As a result, the claimant was terminated. The claimant had never received any prior warnings concerning this type of conduct.

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes errors of judgment or discretion in isolated situations. The employer has the burden of proof to show misconduct.

The evidence in this case established that the claimant provided a free hair cut to her boyfriend at a time the salon was open but when she was not on the clock. The employer has a written policy that prohibits an employee from providing free services, but the rule was interpreted differently when it concerned family members or significant others. Ms. Bagdonas testified that she told employees that boyfriends were not to be given free haircuts, although she did allow fiancés and significant others to get free haircuts. The claimant interpreted the rule as allowing her to give her boyfriend a free hair cut, since she was not on the clock and he was her boyfriend. Ms. Bagdonas admitted that there was no specific written rule that delineated who could get free haircuts and who could not.

The administrative law judge concludes that the claimant exercised poor judgment or discretion by giving her boyfriend a free haircut without first determining if that was permissible under the employer's rules. There is insufficient evidence to conclude that the claimant deliberately

violated a work rule, given the rather loose way that the rule on providing free services was interpreted. For example, Ms. Bagdonas admitted that she did not limit the free haircuts to spouses, since several employees had long-time partners. There was no evidence that the claimant had been previously disciplined for this type of conduct. Since the greater weight of the evidence in this record does not show misconduct, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated April 15, 2010, reference 01, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw