

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTI M ERICKSON
Claimant

APPEAL NO. 12A-UI-04401-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SDH EDUCATION WEST LLC
Employer

OC: 03/18/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

SDH Education West LLC filed a timely appeal from a representative's decision dated April 9, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on May 10, 2012. Claimant participated. The employer participated by Mr. Benjamin Whitmore. Employer Exhibits One through Five were received into evidence.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Kristi Erickson was employed by the captioned employer most recently from February 29, 2012 until March 15, 2012 when she was discharged from employment. Ms. Erickson was employed as a full-time cook and was paid by the hour. Her immediate supervisor was Benjamin Whitmore.

Ms. Erickson was discharged based upon the employer's belief that she had intentionally falsified her application for employment. On the application the claimant was asked if she had ever been convicted of a crime. The claimant marked "yes." When asked to provide details, the claimant responded "OWI-2001." Subsequently, a record check showed that Ms. Erickson had not been convicted of OWI but instead an underage and an open container violation. The claimant mistakenly believed that she had been charged for OWI during the 2001 incident. Although the claimant had previously been employed by the company and apparently had successfully completed a questionnaire regarding previous convictions of crime, she nevertheless was discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Conduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). 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. App. 1992).

The evidence in this matter establishes that the claimant did not intentionally provide false information to her employer regarding previous convictions for a crime. The claimant mistakenly provided information indicating that she had been convicted of a more serious crime than actually had taken place. The misinformation supplied by the claimant was not intentional but based upon lack of memory or lack of clear understanding regarding the charges that had previously been brought against her in the year 2001.

While the decision to terminate the claimant may have been a sound decision from a management viewpoint, intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits has not been established. Benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated April 9, 2012, reference 01, is affirmed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

css/css