

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KARAN D SIMONDALE
Claimant

APPEAL 15A-UI-04021-KC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABM SECURITY SERVICES INC
Employer

**OC: 02/22/15
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 23, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 4, 2015. The claimant participated. The employer participated through representative Sandra Linsin and witnesses: Hope Weinmeister, Security Director; and Faye Hopwood, Safety Manager and Orientation Officer.

ISSUE:

Was the claimant discharged for work-related, disqualifying misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as an officer beginning on October 21, 2014, and was separated from employment on February 23, 2015, when her employment was terminated.

The claimant received written counseling on February 20, 2015 for the way she communicated on the phone, her attitude, and how she dealt with the public. She was put on probation for poor performance and advised that if she had any other complaints about poor job performance during her probationary period her employment would be terminated.

On February 23, 2015, the claimant had an episode of bowel incontinence while driving to work. When she arrived at work at 7:30 a.m., 30 minutes before her shift started, she went to the restroom in the Welcome Center, which is used by staff and visitors. She cleaned herself, put her clothing back on, and began her shift. She did not have additional episodes of incontinence at work and did not feel sick. She did not inform supervisor Weinmeister that she soiled herself or request to go home because of illness or the need to change her clothing.

She is a security guard that works at a computer checking in trucks near a scale at a corn processing facility that makes high-fructose corn syrup. She works in close proximity to the trucks and the drivers. Her work area is also approximately 10 feet from an area where a probe is put into truck to extract corn samples for lab testing, including for contamination. She worked for approximately two hours before she was called to her supervisor's office to discuss the situation.

Co-workers and truck drivers reported that the claimant smelled and her clothing appeared soiled. Hopwood reported to Weinmeister that the women's restroom had fecal matter on multiple surfaces in the toilet area during the period immediately after the claimant used the restroom. Hopwood saw the claimant leave the restroom. Weinmeister saw photographs of the status of the restroom at that time. The employer's client had the restroom cleaned using a specialized service. The chair on which the claimant had been sitting that day reportedly smelled and was soiled. The employer's client expended approximately \$600 on cleaning the restroom and replacing the chair.

The employer's client, which manufactures corn syrup, has food safety rules in place, which cover every area in the plant, including the claimant's work area. In addition, there is a policy that employees are not to report to work if they have a fever or diarrhea, are vomiting, or have uncontrolled release of bodily fluids. The claimant most recently received training on that issue on December 31, 2014. Officers also receive quizzes several times per month on safety issues, including the client's food safety policies. Post orders contained in the officer's handbook state that due to the client's food safety requirements, any release of bodily fluids must be reported. The claimant did not report release of bodily fluids.

Weinmeister spoke to the claimant about the complaints of odor and fecal matter. The claimant acknowledged that she had an incident of bowel incontinence on her way to work. When asked, the claimant did not have a reason why she did not call in to report her illness or tell the supervisor about that situation when she arrived at work.

The claimant testified that she did not call to report that she was sick because she did not want to lose her job, based on the recent warning she had received. The employer permits up to three call-in events without incurring a disciplinary action. The claimant had no points for attendance issues at the time. If she had called in, she would not have faced disciplinary action for attendance. She acknowledged awareness of the food and hygiene safety rules in place with her 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 § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). In this matter, the claimant's conduct indicates a deliberate disregard for the employer's interests.

Workers in the human food production and processing industry reasonably have a higher standard of care required in the performance of their job duties to ensure public safety and health. The claimant had received annual training two months prior to the incident regarding the employer's requirement that employees do not come to work or even enter the premises if they have certain symptoms, one of which the claimant had. The claimant did not call her supervisor to report the incident, as required by policy. She did not tell her supervisor when she entered the premises. She attempted to clean herself and then resume wearing the soiled clothing in an area considered to be off-limits for bodily fluids. She knowingly put the company's corn, which was going to be made into a manufactured product for human consumption, at risk for contamination and waste to the client. She also exposed individuals to bodily fluids. The claimant's conduct shows an intentional and substantial disregard of the employer's interests and of her duties and obligations to the employer. Benefits are denied.

DECISION:

The March 23, 2015, (reference 01) unemployment insurance decision is affirmed. 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.

Kristin A. Collinson
Administrative Law Judge

Decision Dated and Mailed

kac/pjs