

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HEIDI A LEISTEN**  
Claimant

**APPEAL NO. 09A-UI-16548-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HANDICAPPED DEVELOPMENT CENTER**  
Employer

**OC: 10/11/09**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Handicapped Development Center (employer) appealed a representative's October 29, 2009 decision (reference 01) that concluded Heidi Leisten (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 9, 2009. The claimant participated personally. The employer participated by Linda Gill, Vice President of Intermediate Care Facility for the Mentally Retarded.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 30, 2009 as a full-time registered nurse. On August 28, 2009, the claimant signed an application for employment and certified her answers as correct. The claimant checked "No" when asked "Have you ever been employed her before?". On or about October 5, 2009, the employer discovered the claimant was hired in 2001. During her first orientation day, the claimant left and did not return. The employer has a rule that it does not re-hire employees.

On October 5, 2009, the employer asked the claimant about her previous employment. The claimant was confused at first. Then she remembered that when she was 18 years old she started orientation, was uncomfortable with the work environment as a young person and walked out. When the claimant remembered she apologized for the unintentional mistake. The employer terminated her.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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.

871 IAC 24.32(6) provides:

(6) False work application. When a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy, such falsification shall be an act of misconduct in connection with the employer.

Misconduct serious enough to warrant a discharge is not necessarily serious enough to warrant a denial of unemployment benefits. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The grounds for discharge listed under a contract of hire are irrelevant to determination of eligibility for Job Service benefits in a misconduct situation. Hurtado v. Iowa Department of Job Service, 393 N.W.2d 309 (Iowa 1986). The employer may legitimately be concerned about a previous employee. However, there is no evidence the claimant's actions were intentional or would harm anyone. While understanding the concerns of the employer, the judge does not believe the employer has established that the falsification of the application could have exposed it or its workers to harm or liability sufficient to warrant a disqualification of unemployment benefits.

**DECISION:**

The representative's October 29, 2009 decision (reference 01) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs