

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LISA A AUSTIN**  
Claimant

**APPEAL NO. 08A-UI-02216-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE UNIVERSITY OF IOWA**  
Employer

**OC: 02/03/08 R: 03**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Lisa Austin filed an appeal from a representative's decision dated February 28, 2008, reference 01, which denied benefits based upon her separation from the University of Iowa. After due notice was issued, a hearing was held by telephone on March 20, 2008. Ms. Austin participated personally. The employer participated by Nancy Kroeze, Hearing Representative, and Witnesses Lori Lindseth and Jennifer Long.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from January 6, 1992 until January 31, 2008 when she was discharged for violating the terms of a last chance employment agreement. Ms. Austin was most recently employed as a part-time registered nurse and was paid by the hour. Her immediate supervisor was Jennifer Long.

Because of reasonable employer concerns regarding performance, complaints of the smell of alcohol and attendance, the claimant had been placed under a "last chance" employment agreement. The employer considered Ms. Austin to be a good nurse but had noted a pattern of what appeared to be a controlled substance or alcohol abuse and had confronted the claimant. Shortly before beginning the terms of the last chance agreement, the claimant had tested positive for a controlled substance.

Under the terms of the last chance agreement Ms. Austin agreed to successfully complete a rehabilitation program. On or about January 31, 2008, the employer was informed by the rehabilitation program that Ms. Austin had not completed the program and had violated its terms. The claimant was, therefore, discharged.

## REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the employer has sustained its burden of proof in establishing that the claimant's discharge was disqualifying under the provisions of the Iowa Employment Security Law. It has. The evidence in the record establishes that because of reasonable suspicion the employer had concluded that Ms. Austin was having performance problems and attendance problems because of substance or alcohol abuse. It appears that the claimant agreed and voluntarily entered into a last chance agreement with the employer after she tested positive for a controlled substance on or about January 8, 2008. On January 18, 2008, the parties entered into the last chance agreement under the terms the claimant had agreed to successfully complete a voluntarily rehabilitation program or face termination from employment. The claimant was discharged when informed by the rehabilitation program that Ms. Austin had not completed it and had violated its terms. The claimant in her testimony agrees that she had violated the terms of the last chance agreement.

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.

For the reasons stated herein, the administrative law judge concludes that the claimant's discharge took place under disqualifying conditions. The claimant violated the terms of a last chance agreement that she voluntarily entered into with her employer.

**DECISION:**

The representative's decision dated February 28, 2008, reference 01, is hereby affirmed. The claimant was discharged under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided that she meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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