

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

COLLETTE L WAIT
Claimant

APPEAL NO. 11A-UI-08423-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LINK ASSOCIATES
Employer

OC: 05/22/11
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Collette Wait, filed an appeal from a decision dated June 15, 2011, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on August 8, 2011. The claimant participated on her own behalf and was represented by Randall Schueller. The employer, Link Associates (Link), participated by Program Director Jay Burns, Residential Administrator Loren Strait, Executive Director Linda Dunshee and Assistant Program Director Valarie Schwager. Exhibit One was admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Collette Wait was employed by Link from February 20, 2009 until May 23, 2011 as a full-time residential supervisor. She had received the employer's policies and procedures and her job description which required her to have a valid driver's license. Any speeding tickets or other traffic citations must be reported to a supervisor within one week.

On April 5, 2010, she had received a written warning for falsification of company records. On May 16, 2011, the claimant reported to Residential Administrator Loren Strait and Assistant Program Director Valerie Schwager, she had had an accident on May 13, 2011, for which she had been cited. Ms. Schwager said she would contact Fleet and Facility Director Jim Wilke to pull Ms. Wait's driving record and depending on the review of that and the company policy, her job would be in jeopardy. Mr. Wilke was informed and said he would request the record in a week to make sure that all the information was current.

On May 20, 2011, the claimant met with Executive Director Linda Dunshee about the situation. She was concerned her job was in jeopardy and represented to Ms. Dunshee that Ms. Schwager had already discussed with her about possible accommodations which could be made to allow her to continue working even if her license was revoked or restricted.

Ms. Dunshee was alarmed that accommodations had already been discussed before the driving report had been received or Ms. Wait's situation carefully reviewed under company policies. She sent an e-mail to Ms. Schwager, Mr. Strait, Mr. Wilke and Mr. Burns. Ms. Schwager responded and affirmed no accommodations has been discussed with the claimant, only the fact that the driving record would be received and reviewed and only then would a decision on her continued employment made.

The employer considered this misrepresentation by Ms. Wait to be dishonesty and falsification. The employer was prepared to discharge her but on May 23, 2011, she was interviewed and allowed to explain her side of the story. She commented at one point in the interview, "are you saying if I hadn't liked I wouldn't have been fired?" Although the driving record was part of the overall process which led to the decision to discharge, it was the misrepresentation that Ms. Schwager had agreed to accommodate her that actually precipitated the decision.

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.

The claimant had been advised her job was in jeopardy pending a review of her driving record. A final determination on that basis was never reached because the actual precipitating event which caused the discharge was the claimant's misrepresentation to the executive director about assurance or agreements made by the assistant program director. The employer has the

right to expect honesty and integrity from its employee's not false, misleading statements. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of June 15, 2011, reference 01, is affirmed. Collette Wait is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css