

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANA M COX
Claimant

APPEAL NO. 07A-UI-11383-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OMNI DENTAL CENTRES PLC
Employer

OC: 11-04-07 R: 01
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 4, 2007, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on December 28, 2007. The claimant did participate. The employer did participate through (representative) Dr. David L. Jones, DDS; Dr. James Knott, DDS; and Terri Lenihan, Practice Administrator. Employer's Exhibit One was received.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a hygiene retention coordinator or business assistant, full-time, beginning October 24, 2006, through November 7, 2007, when she was discharged.

The claimant was discharged for not performing her job functions. The claimant was not making follow up phone calls or retention calls, as was her sole responsibility. On one day, the claimant made only two phone calls in her allotted four hours. On another day (November 5), the claimant made only one phone call during a four and one-half hour time period she was given to make the calls. The claimant should have been able to accomplish up to anywhere from 50 to 80 phone calls during that time period. Since the claimant's discharge, the employer has other employees filling in making the phone calls, and other employees who are still required to perform their own job duties are making more phone calls than the claimant made when it was her sole responsibility to make the calls.

The claimant was warned on October 16, 2007 about her failure to perform her job duties, specifically the phone calls, and was instructed that if she failed to get the phone calls made, her job was in jeopardy. The claimant was specifically given a schedule to follow to get the phone calls made. The schedule set out large blocks of time where the claimant was to focus on making the calls. The claimant's failure to make the calls resulted in the practice losing patients and thus income. The claimant admits she failed to follow the schedule given to her,

which was specifically made in order to allow her time to make the retention phone calls. The claimant admits that she did not follow the schedule but chose instead to help out other employees or to perform other job duties not her own. The claimant was simply not performing her own job duties, including making the retention calls.

The claimant was given additional training on October 30 and it was made clear to her that the retention phone calls needed to be made. The employer was tracking on the system how many calls the claimant was making and noticed that after she was spoken to on October 16 her calls on October 18 increased, but then dropped off again into the first week in November.

While the claimant was going through some difficult personal issues, her own personal problems are not an excuse for failing to make phone calls she was capable of making and required to make. Since others have taken over the retention phone calls, even on a sporadic basis, the schedule is fully booked and hence the practice is more profitable.

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.

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 Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

The claimant knew or should have known that her failure to make the phone calls was conduct not in the employer's best interest. The claimant received fair warning that the employer was no longer going to tolerate her performance and conduct, that is, her failure to make the phone calls. Even after being warned and retrained, the claimant failed to follow the employer's instruction to make the retention phone calls. Claimant's repeated failure to adequately and fully perform her job duties after having established the ability to do so is evidence of her willful intent not to do so and is misconduct. Benefits are denied.

DECISION:

The December 4, 2007, reference 02, 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. Inasmuch as no benefits were claimed or paid, no overpayment applies.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw