

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRENDA C BRASHER
Claimant

APPEAL NO. 07A-UI-03497-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF DAVENPORT
Employer

**OC: 03-11-07 R: 04
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

Section 96.3-7 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated March 28, 2007, reference 01, which denied benefits. After due notice was issued, a hearing was held by telephone on April 19, 2007. The claimant participated. Although notified, the employer did not participate.

ISSUE:

The issue is whether the claimant voluntarily quit work for reasons attributable to the employment or whether the claimant was discharged for misconduct in connection with her work.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Brasher was employed as a communications clerk for the City of Davenport from September 2000 until March 11, 2007, when she submitted her resignation in lieu of being discharged for excessive unauthorized absenteeism. The claimant did not dispute the employer's basis for termination and tendered her resignation so that she would not have a discharge on her employment history.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes, based upon the evidence in the record, that the claimant's employment came to an end because of a decision made by the City of Davenport to discharge the claimant for excessive on authorized absenteeism. The record establishes that the claimant had been warned regarding her attendance; however, attendance infractions continued and the claimant was ultimately given the decision of resigning or being discharged. Ms. Brasher does not dispute the basis for her termination, agreeing the employer was justified in discharging her from employment. Although sympathetic to the claimant's situation, the administrative law judge must hold that the record establishes that the claimant's discharge took place under disqualifying conditions. Benefits are withheld.

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 finds that the claimant separation was disqualifying and benefits be withheld.

DECISION:

The representative's decision dated March 28, 2007, reference 01, is hereby affirmed. The claimant was separated under disqualifying conditions. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

tpn/kjw