

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DOROTHY C FERGUSON**  
Claimant

**APPEAL NO. 06A-UI-09310-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 08-20-06 R: 01**  
**Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge/Misconduct  
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 12, 2006, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on October 18, 2006. Claimant participated. Employer participated through Johnelle Bonham, Katie Spellman, and Terri Murray, and was represented by Lynn Corbeil of Johnson & Associates. Employer's Exhibits 1 through 9 were received.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time cook from January 31, 2000 until July 7, 2006 when she was discharged. On July 7 claimant failed to reheat pureed food to temperature, failed to take food temperatures before serving, failed to put chicken salad on ice, and failed to wear gloves when touching bread. Terri Murray, corporate dietician, reported the incidents. She also failed to take food temperatures before serving on July 5 and 6. Employer issued a prior written warning on March 2, 2006 for failing to use proper measuring scoops and portion sizes according to doctors' orders and not using care plan ordered divided plates for service. She was also warned on April 27, 2006 for failing to follow recipes and not bringing the pureed food back up to temperature. Claimant went through training yearly.

The claimant has received unemployment benefits since filing a claim with an effective date of August 20, 2006.

**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 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.

It is common knowledge that food-borne pathogens resulting from improperly heated or cooled foods can cause illness. For residents of a care facility whose health is likely to be more fragile than the general population, following food safety rules is essential. Claimant's failure to abide by food safety procedures after having been warned endangered employer's residents' health and constitutes disqualifying misconduct. Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The September 12, 2006, reference 01, decision is reversed. 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. The claimant is overpaid benefits in the amount of \$825.00.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw