

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MONICA P GONZALES
Claimant

APPEAL NO. 09A-UI-01196-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PALMER & COMPANY
Employer

OC: 08/03/08 R: 12
Claimant: Respondent (4R)

871 IAC 23.43(9)a – Combined Wage Claim Transfer of Wages
Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 20, 2009, reference 05, decision that does not relieve employer from benefit charges. After due notice was issued, a telephone conference hearing was held on February 11, 2009. Claimant did not participate. Employer participated through Carissa Lewis.

ISSUE:

The issue is whether employer can be relieved of benefit charges.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked temporarily as a full-time seasonal production worker and was employed from June 4, 2007 until June 8, 2007 when employer discovered she falsified her application and employer verified with the Social Security Administration that her date of birth (DOB) did not match the May 5, 1976 DOB on the Minnesota identification card number M563418110517 and that her signature did not match the signature for the same name and number on the Social Security card. When confronted, she did not dispute the employer's information and left willingly. It is noted that Iowa Workforce Development (IWD) information for the DOB is different than the employer had although the Social Security number is the same. It is also noted that IWD has claimant listed as a male, whether by keystroke error, deliberate misrepresentation in the claim filing process, or otherwise.

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.

Claimant's misrepresentation of the date of birth and likely other identity issues is misconduct. Benefits are denied.

871 IAC 23.43(9) provides in part:

(9) Combined wage claim transfer of wages.

a. Iowa employers whose wage credits are transferred from Iowa to an out-of-state paying state under the interstate reciprocal benefit plan as provided in Iowa Code § 96.20, will be liable for charges for benefits paid by the out-of-state paying state, but no reimbursement so payable shall be charged against a contributory employer's account for the purpose of section 96.7, unless wages so transferred are sufficient to establish a valid Iowa claim, and that such charges shall not exceed the amount that would have been charged on the basis of a valid Iowa claim. However, an employer who is required by law or by election to reimburse the trust fund will be liable for charges against the employer's account for benefits paid by another state as required in section 96.8(5), regardless of whether the Iowa wages so transferred are sufficient or insufficient to establish a valid Iowa claim....

The employer's account is not chargeable based up on this separation.

DECISION:

The January 20, 2009, reference 05, decision is modified in favor of the appellant. The claimant was discharged from employment due to job-related misconduct; however, this decision does not affect the benefit status outside of Iowa. Employer's Iowa account number 004292 shall not be charged as the separation would be disqualifying in Iowa.

REMAND: The issue of the claimant's identity and related eligibility to receive benefits delineated in the findings of fact is remanded to the Claims Section of Iowa Workforce Development for an initial investigation and determination.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css