

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CLAIMANT

Claimant

APPEAL NO. 08A-UI-02793-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMPLOYER

Employer

**OC: 02/10/08 R: 01
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant appealed a representative's March 19, 2008 decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with the employer for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 7, 2008. The claimant participated personally. The employer participated in the hearing.

The case contains material that is required by law to remain confidential as to the general public. The dependent adult abuse information provided in the hearing will only be made available to the parties to this proceeding and any others who are legally authorized to have access to the information pursuant to Iowa Code section 235B.6.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on November 9, 2007, as a full-time personal service attendant. The claimant told the employer she left her previous employer because the State of Iowa was too involved in her job. The employer completed a positive background check on the claimant.

On December 27, 2007, the State of Iowa sent the claimant a letter informing her that she had been placed on the abuse registry for her actions at her previous employer. The claimant did not receive the letter until January 9, 2008. The claimant notified the employer of the letter on February 2, 2008. The employer was distressed by the claimant's failure to promptly notify the employer of the finding and immediately suspended the claimant pending investigation. On February 13, 2008, the State of Iowa told the employer it could not employ the claimant. The employer terminated the claimant.

REASONING AND CONCLUSIONS OF LAW:

An administrative agency making a determination regarding an unemployment compensation claim pursuant to Iowa Code section 96.6 is authorized to have access to dependent adult abuse information in those cases where the abuse is founded. Iowa Code section 235B.6(2)d(4). However, the administrative agency is prohibited from re-disseminating the information to individuals who would not otherwise have independent access to the information under section 235B.6.

Appeal hearings and records of Workforce Development are public records within the meaning of the Iowa Open Records Act (Iowa Code Chapter 22), the Iowa Administrative Procedures Act (Iowa Code Chapter 17A), and the Iowa Employment Security Law (Iowa Code Chapter 96). Pursuant to Iowa Code section 22.2(1), every person has the right to examine and copy a public record and to publish or otherwise disseminate a public record or information contained therein. The provisions of Iowa Code section 17A.12(7) require that contested case proceedings be open to the public. Unemployment appeals hearings are to be conducted pursuant to the provisions of Chapter 17A. Rules of Workforce Development require that administrative law judge decisions be maintained on file for public inspection. See 871 IAC 26.17(3).

The prohibition against re-disseminating dependent adult abuse information requires that the administrative law judge issue a determination that does not identify the parties. To do otherwise would necessarily involve re-dissemination of information required by law to remain confidential. A public decision shall be issued that does not identify the parties. A decision with identifying information will be issued to the parties. That decision and the hearing record, including the audio recording, shall be sealed and not publicly disclosed.

Regarding the substantive issue, for the reasons that follow, the administrative law judge concludes the claimant was discharged for 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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. She intentionally withheld vital information from the employer. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

DECISION:

The representative's March 19, 2008 decision (reference 02) is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw