

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEANNE A CLAY
Claimant

APPEAL NO. 13A-UI-09410-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

AEGIS THERAPIES INC
Employer

OC: 07/07/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated August 1, 2013, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on October 11, 2013, by telephone conference call. The claimant participated personally. The employer was represented by Matthew Cappetta, director of rehabilitation. The record consists of the testimony of Matthew Cappetta and the testimony of Jeanne Clay.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer provides rehabilitation services in nursing homes. The claimant had two different stints of employment with the employer. The second period of employment began on January 29, 2007. The claimant was a full-time speech therapist. The claimant's last day of work was July 2, 2013. The claimant was terminated on July 2, 2013.

The claimant was terminated because the employer believed there was a discrepancy on her time card of July 21, 2013. The claimant reported that she started work at a particular facility at 16:05 and left at 17:45. The employer believed that she did not start until 16:40 but did leave at 17:45. The claimant does not believe that she made a mistake on reporting her time but that if she did, it was a mistake on her part and not deliberate.

The claimant had never had any disciplinary action for time card violations.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes errors of judgment or discretion or simple negligence in isolated instances. The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. The most reasonable inference from the evidence is that the claimant made a simple mistake on her time card and did not deliberately report hours that she did not work. She had never before had an error on her time card nor had she received any warning or other disciplinary action for time card violations. A onetime mistake without evidence of deliberate action on the part of the claimant is not misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated August 1, 2013, reference 01, is affirmed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs