

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONNA L LOURENS
Claimant

APPEAL NO. 11A-UI-15209-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**GOODWILL INDUSTRIES
WALL STREET MISSION**
Employer

**OC: 10/23/11
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 11, 2011 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on December 22, 2011. Claimant participated. Employer participated through director of human resources, Lori Heger; director of contract services, Bonnie Belongea; and vice president of commercial services, Steve Sembach.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a janitorial lead worker working full time assigned at the Air National Guard Armory since June 2005 and was separated from employment on October 25, 2011. Most recently on October 5, 2011 supervisor Deb Ludwick reported to Belongea that claimant took a long lunch. She had been warned on September 7, 2011 about quality of the cleaning service and excessive breaks. No one on behalf of the employer confronted claimant or interviewed her about Ludwig's reports until she was fired 20 days later. Belongea investigated by interviewing claimant's two subordinate employees on unknown dates. The investigation did not involve confrontation of the claimant. Sembach started the process to replace the claimant on October 5 and found a replacement for her two weeks prior to her separation. Sembach coordinated the claimant's replacement with the Guard commander.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

A lapse of 11 days from the final act until discharge when claimant was notified on the fourth day that his conduct was grounds for dismissal did not make the final act a "past act." *Greene v. EAB*, 426 N.W.2d 659 (Iowa 1988).

Although the claimant did engage in a final act of misconduct by taking a long lunch on October 5, inasmuch as employer knew of the incident the same day, did not confront claimant or advise her it was an issue that would be investigated until she was discharged 20 days later, and hired her replacement two weeks prior to the separation, the act for which the claimant was discharged was no longer current. Because the claimant may not be disqualified for past acts of misconduct, benefits are allowed.

DECISION:

The November 11, 2011 (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed. The benefits withheld shall be paid, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css