

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBRA EBELSHEISER
Claimant

APPEAL NO. 10A-UI-15294-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRINITY REGIONAL MEDICAL CENTER
Employer

OC: 08-29-01
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 26, 2010, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 20, 2010. The claimant participated in the hearing. Ted Vaughn, Human Resources Manager, and Keith Sturtz, Supervisor, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time cook for Trinity Regional Medical Center from March 31, 2003 to August 26, 2010. The line cooks are supposed to complete the production sheets on a daily basis with the food temperatures listed. Different foods have to be tested at different times and more than one temperature reading is taken. The temperature needs to be taken at the time the food is done and again after the next shift starts. A third temperature must be taken halfway through the tray line. Inadequate temperatures could result in patient illness, so completion of the temperature sheets is vital. Additionally, the employer could be cited if an inspector saw incomplete production sheets. The claimant received a verbal warning for attendance and job performance January 14, 2010. She was not completing the production sheets on a daily basis and the employer discussed the importance of the temperature issues at that time. The employer suspended the claimant in-house for poor performance February 1, 2010. The claimant was suspended for three days May 10, 2010, for her repeated failure to follow directives. The employer advised her that failure to fulfill her job duties could result in termination. Subsequently, the supervisor asked the claimant why she had not filled out the production sheets and the claimant grabbed the papers and started filling out the requested information. The employer saw that the claimant had not recorded the temperatures on August 21, 2010 and August 25, 2010. The employer asked her about it and the claimant said she would take care of it when she came in early the next morning. The claimant was discharged August 26, 2010.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for 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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged August 26, 2010, for a repeated failure to follow directives. Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The claimant knew what was required and knew the importance of completing the temperature sheets but continued to ignore her job duties. The claimant's failure to follow directives shows a willful disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Consequently, the administrative law judge must conclude that work-connected misconduct as defined by Iowa law has been established in this case. Therefore, benefits are denied.

DECISION:

The October 26, 2010, reference 02, decision is affirmed. 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw