

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STACI LEWIS
Claimant

APPEAL NO: 10A-UI-15320-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENESIS DEVELOPMENT
Employer

OC: 10-03-10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 27, 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 21, 2010. The claimant participated in the hearing. Sandra Pingle, Site Director and Anita Schable, Operations Director, participated in the hearing on behalf of the employer. Employer's Exhibits One through Eight were admitted into evidence.

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 vocational supervisor for Genesis Development from April 22, 2009 to October 4, 2010. She was discharged for repeated violations of company policy. The claimant supervises a work crew of people with disabilities and the break times are strictly enforced. A consumer contacted the employer September 27, 2010, and said the claimant was outside smoking when it was not a break time. The employer spoke with another consumer and confirmed the information. This was the final incident prompting the termination since the claimant had received five previous warnings for violations of the break policy. The employer issued her a verbal warning September 23, 2009, regarding break time issues. The employer had been told by several individuals that breaks were being taken in the morning, regardless of the time they started work. The break rule provides that if the crew is on the floor working by 9:15 a.m., they can take a 15-minute break at 10:30 a.m. If they start work after 9:15 a.m., they are not to break until their lunch break at 12:00 p.m. However, the afternoon break could only be taken if the Jack Link employees took their break at that time. The claimant acknowledged she was not following the break policy and would comply thereafter. Another verbal warning was issued March 1, 2010, to the claimant and another employee regarding break time usage and timeliness. Breaks are used to promote integration and to build positive work relationships. The employer directed its employees to promptly return from their 15-minute breaks and their 30-minute lunch break. The claimant and her co-worker received a verbal warning May 17, 2010, for smoking outside of a break time. The employer issued the claimant

a written warning May 24, 2010, for failure to follow policies, poor judgment and a lack of integrity. There were still issues with breaks but there were also problems with both employees smoking outside together during breaks when they were supposed to alternate with each other so the consumers always had supervision. The claimant had also caused some consumers to be late in arriving at work because she stopped to talk to someone. Only two months later, the employer issued the claimant a second and final written warning July 27, 2010. She continued to smoke outside of break times. The claimant was suspended and advised that any further violations would result in her termination.

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 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 of her, knew her job was in jeopardy but still opted to violate company policy. The claimant's policy violations show 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-related misconduct as defined by the unemployment insurance law has been established in this case. Therefore, benefits are denied.

DECISION:

The October 27, 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/css