

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RITA A FOUBERT**  
Claimant

**APPEAL NO. 07A-UI-10171-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WILLIAM PENN UNIVERSITY**  
Employer

**OC: 09/23/07 R: 03  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

William Penn University (employer) appealed a representative's October 23, 2007 decision (reference 01) that concluded Rita Foubert (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 20, 2007. The claimant participated personally. The employer participated by Christy Gay, Controller, and Joyce Klein, Account Receivable Manager.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 4, 2007, as a full-time student account manager. The claimant was late almost every day for work but walked in with other workers who were late. The employer initially told the claimant she could use her lunches as comp time. She did not fill out vacation slips because she worked through all her lunches except when she had a hair appointment. She used her lunch time for her hair appointment.

Near the end of her employment the claimant suspected her son had cancer. It was an emotional time and the employer encouraged her to take time off for family matters. On September 19, 2007, the claimant took time off to take her son to Iowa City for tests. The employer told her to go and they would send out the statements. The statements did not get sent.

On September 28, 2007, the employer terminated the claimant for tardiness, failure to complete vacation slips and not completing the statements in a timely manner. The employer did not issue the claimant any warnings during her employment.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not 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 employer did not provide sufficient evidence of job-related misconduct at the hearing. There was no explanation supplied by the employer as to why the claimant was terminated for the same behavior for which others were not terminated. There was no notice given to the claimant that she could be terminated if her behavior did not change. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's October 23, 2007 decision (reference 01) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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