

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE R SYNDER
Claimant

APPEAL NO. 10A-UI-15153-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CLINTON STAFFING COMPANY
Employer

**OC: 09/26/10
Claimant: Appellant (2)**

Section 96.5-2-A – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated November 2, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 17, 2010. Claimant participated. Employer participated by Jane Brown, Human Resources Manager. The record consists of the testimony of Jane Brown; the testimony of Michelle Snyder; and Employer's Exhibits 1-4.

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 is a temporary staffing agency. The claimant was given an assignment to work at Professional Fulfillment Corporation (PFC) on August 4, 2010. The claimant worked as an administrative assistant and primarily did filing and data entry. When the assignment first began, the claimant worked 40 hours per week.

On August 12, 2010, the PFC supervisor, Jody Claeys, spoke to the claimant about her errors. She was asked to slow down in order to decrease the number of errors.

On September 6, 2010, the claimant was informed that her hours were going to be cut to four days per week. The claimant was upset as she thought she had taken an assignment for a full-time job. The claimant vented her frustrations to two other employees. She told one employee that she had bounced a couple of checks because she was not getting enough hours.

Jody Claeys heard about these comments and felt that the claimant was blaming the company for her own poor money management. Ms. Claeys did not like the claimant's attitude. She ended the claimant's assignment on September 29, 2010.

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 disqualifies an individual from receiving unemployment insurance benefits 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. The employer has the burden of proof to show misconduct.

There is insufficient evidence in this record to establish misconduct. The claimant used poor judgment when she discussed her unhappiness with her hours and her checks bouncing with another employee. There is no evidence that she intended to stir up problems for the employer and that she thought the conversation were "venting" to co-workers. She may have also thought the conversations were private. Ms. Claeys apparently took exception to what the

claimant was saying and ended the assignment. Ms. Claeys did not testify at the hearing and therefore what she heard and felt cannot be fully ascertained. The claimant was never warned about her attitude or told that she could not discuss work issues with her fellow workers. She was not gossiping about other workers, but expressing her frustration that her hours were being cut. This may have been poor judgment on her parts, but it is not misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated November 2, 2010, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css