

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HELEN D LAIRD
Claimant

APPEAL NO. 08A-UI-02022-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES REGISTER & TRIBUNE
Employer

**OC: 01/06/08 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated February 15, 2008, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 13, 2008. Claimant participated personally. Employer participated by Barb Hamilton, Talx Hearing Representative with witnesses Theresa Allen, Compensation HRIS Manager and Randall Klem, Sales Manager. Exhibit One was admitted into evidence.

ISSUE:

The issues in this matter are whether claimant was discharged for misconduct and is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for the employer January 8, 2008.

Employer discharged claimant on January 8, 2008 because claimant failed to complete a performance improvement plan dated October 15, 2007. Claimant had in 2006 met goals by 105%. Claimant in 2007 could not consistently meet goals. Claimant was put on a plan in October 2007 to improve her performance. Claimant was told that she would lose her job if she failed to meet goal. Claimant had support of an account relationship specialist who left the employer November 1, 2007. Claimant had half time support from this specialist. The specialist was not replaced until January 8, 2008. Claimant had improvement in her performance during the last three months. Claimant did not meet goal but did show significant improvement over her prior work performance.

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.

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.

The administrative law judge holds that the evidence has failed to establish that claimant was discharged for an act of misconduct when claimant violated the employer's policy concerning work performance. Claimant was warned concerning this policy.

The last incident, which brought about the discharge fails to constitute misconduct because claimant had made improvement in her revenues. Claimant did not have assistance of a specialist during the last two months. This did impact on claimant's performance. The lack of a specialist combined with a noticeable improvement in revenues compared to the prior months indicates a determined improvement in performance. The lack of a support specialist is a factor that handicapped claimant during the last several months with respect to meeting goals of the performance improvement plan. This factor prevents employer from establishing claimant's

intentional failure to meet plan goals. While claimant's overall performance was unsatisfactory she did show a significant improvement in compliance with the October 2007 performance improvement plan. Therefore, claimant was not discharged for an act of misconduct and as such, is not disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated February 15, 2008, reference 01, is affirmed. Unemployment insurance benefits shall be allowed, provided claimant is otherwise eligible.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs