

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KIMBERLY K PIERSON**  
Claimant

**APPEAL NO. 10A-UI-08238-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PETSMART**  
Employer

**OC: 04/18/10**  
**Claimant: Respondent (1-R)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated June 3, 2010, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 26, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked for the employer as a dog groomer from June 13, 2009, to October 26, 2009. She injured herself at work on August 31, 2009, and was off work for a month with restrictions.

The employer discharged the claimant on October 26, 2009. She was informed it was because she was unable to perform her job. More than a week before her discharge, there was an incident where a dog had got away from her and she had gotten upset because the employer had no dogs for her to groom.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The evidence fails to establish work-connected misconduct.

During the hearing, the claimant was asked if she was able to work as of April 18, 2010. She responded: "No I am disabled. I have disability filed. I have notes from my doctor. I'm completely disabled because of this injury. No joke."

The issue of whether the claimant was and is able to work has not been determined in this case. The claimant's statements during the hearing clearly raise this issue, but this was not an issue listed on the hearing notice so it cannot be decided. This issue is remanded to the Agency to investigate and make a decision.

**DECISION:**

The unemployment insurance decision dated June 3, 2010, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits based on the reasons for her separation from employment, if she is otherwise eligible. The issue of whether the claimant was and is able to work is remanded to the Agency to investigate and make a decision.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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