

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CINDY R BORDER
Claimant

APPEAL NO. 13A-UI-00285-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANKENY SENIOR HOUSING LLC
Employer

**OC: 12/09/12
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the representative's decision dated January 4, 2013 (reference 01), which held that the claimant was not eligible for unemployment insurance benefits. After due notice was issued, a hearing was held by telephone conference call on February 8, 2013. The claimant participated personally. The claimant was represented by Elizabeth Flansburg, attorney at law. The employer participated by Emily Hamby, human resources director. The record consists of the testimony of Emily Hamby and the testimony of Cindy Border.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge makes the following findings of fact:

The employer is a senior assisted living community located in Ankeny, Iowa. The claimant was a full-time care associate. The claimant was hired on January 19, 2012. The claimant's last day of work was December 7, 2012. The claimant was terminated on December 8, 2012.

The claimant was told by the former executive director, Julia Ruffell, that she was being terminated for insubordination. When the claimant asked Ms. Ruffell what she meant by insubordination, she was told by Ms. Ruffell to look it up in the dictionary. The claimant was never told what she had done wrong or when. The claimant never received any written warnings while working for the employer.

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 leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Insubordination, which is the continued failure to follow reasonable instructions, constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. There is no evidence of misconduct in this record. The individual who participated on behalf of the employer had no firsthand knowledge of any of the events that led to the claimant's termination. She was relying on information in a file from a former executive director. The claimant credibly testified that she asked the former executive director why she was being terminated. The only response was "insubordination." The claimant could not say when or where the insubordination occurred nor could Ms. Hamby other than to mention something about a requested day off. The claimant testified that if that was what led to her termination, that she was not insubordinate and that it was the executive director who was yelling at her. Since the employer has failed to show misconduct, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The unemployment insurance decision dated January 4, 2013, reference 01, is reversed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs