

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SHANNON M PITSENBARGER
Claimant

APPEAL 15A-UI-06307-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PACKERS SANITATION SERVICES INC
Employer

**OC: 05/03/15
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from the May 18, 2015, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 8, 2015. Claimant participated. Employer participated through Andrea Stelpflug, Human Resources Generalist. Employer's Exhibit One was entered and received into the record.

ISSUES:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as an office coordinator beginning on February 6, 2013 through May 6, 2015 when she was discharged. The claimant was discharged due to her failure to meet the employer's expectations in completing her job duties. Colton Nelson became her supervisor in December 2014. Mr. Nelson added at least three projects to her work load, including a large one to prepare for the USDA inspection. The employer agrees that the claimant's work load had increased during the end of her employment. The claimant was given an assistant to help her in March 2015 right before she was suspended for three days at the end of March. The claimant was busy training the new assistant which slowed her down on completing the job duties required of her and added to her work load. The claimant simply was unable to meet the employer's expectations despite giving the employer her best efforts. After the claimant was discharged, the employer found additional uncompleted paperwork going back as far as 2012. The claimant had no extended time period where she was able to meet the employer's expectations, even after being warned that her failure to meet the expectations was placing her job in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. *Kelly v. IDJS*, 386 N.W.2d 552 (Iowa App. 1986). The claimant was given extra job assignments at the same time she was expected to complete her job duties in a timely manner. Documents were found dating back to 2012 that had not been dealt with, establishing that the claimant had been struggling even before new job duties were added to her tasks. Since the evidence established that claimant had never had a sustained period of time during which she performed her job duties to employer's satisfaction and inasmuch as she did attempt to perform the job to the best of her ability but was unable to meet the employer's expectations, no intentional misconduct has been established, as is the employer's burden of proof. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Accordingly, no disqualification pursuant to Iowa Code § 96.5(2)a is imposed. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The May 18, 2015, (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css