

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AUDRINA R COLEMAN
Claimant

APPEAL NO. 10A-UI-06320-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SAPP BROS TRUCK STOPS INC
Employer

OC: 02/28/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Audrina R. Coleman filed a timely appeal from an unemployment insurance decision dated March 26, 2010, reference 01, that disqualified her for benefits. Before a hearing was scheduled, the claimant, through her attorney, submitted written interrogatories to be answered by the employer. The employer declined to do so. Based upon this failure, the employer was not permitted to participate in the final hearing.

ISSUE:

Was the claimant discharged for misconduct in connection with her employment?

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Audrina R. Coleman was employed as support manager by Sapp Bros Truck Stops, Inc. from July 2009 until she was discharged March 3, 2010. She was fired by the general manager who stated that she had failed to call the computer service company following a computer failure that had occurred previously. Ms. Coleman had, however, contacted the computer service company.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes the claimant was discharged for misconduct in connection with her employment. It does not.

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.

The employer has the burden of proof. See Iowa Code section 96.6-2. As noted above, the employer did not participate because it declined to answer interrogatories that had been propounded to it in accordance to Iowa law by the claimant's attorney. The only evidence before the administrative law judge is the claimant's testimony. It does not indicate that the claimant was guilty of misconduct. Benefits are allowed.

DECISION:

The unemployment insurance decision dated March 26, 2010, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs