

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**LOLISA R FOSTER
5600 JERSEY RIDGE RD APT Q6
DAVENPORT IA 52807**

**HANDICAPPED DEVELOPMENT CENTER
3402 HICKORY GROVE RD
PO BOX 2450
DAVENPORT IA 52809**

**Appeal Number: 06A-UI-01791-S2T
OC: 01/08/06 R: 04
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Lolisa Foster (claimant) appealed a representative's February 6, 2006 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Handicapped Development Center (employer) for wanton carelessness in performing her work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 2, 2006. The claimant participated personally. The employer participated by Micki Diericks, Acting Program Director.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 7, 2002, as a full-time support staff person. The employer is licensed by the Department of Human Services and provides companions for mentally retarded participants when the Department of Human Services, the guardians of an individual and the employer require such service. Each participant has an individualized plan prepared by the three entities. That plan is available in the participant's residence and should be read by the employee who is assigned to be the participant's companion. The employer would risk losing its license should it fail to follow the individualized plans of the participants.

On July 29, 2003, the employer issued the claimant a written warning. The claimant transported a number of participant's to a job site and forgot one at the participant's house. The employer warned the claimant that further infractions could result in her termination from employment.

The claimant worked as a companion to a particular participant approximately five times. When the claimant arrived at the participant's residence the previous companion would leave. At the end of the claimant's shift another companion would arrive before the claimant left the residence. The claimant did not read the participant's individualized plan which stated the participant should never be left alone. On January 7, 2006, the claimant allowed the participant to leave the apartment for over an hour while the claimant remained in the participant's apartment alone. The participant reported the event to the employer and the employer investigated. The claimant admitted letting the participant leave her for over an hour. The employer terminated the claimant on January 13, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes she was.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to conduct themselves in a certain manner. The claimant disregarded the employer's right by failing to accompany a participant. While the first incident of failing to accompany a participant was more than two years prior to the final incident, the claimant should have been aware of the gravity of the situation. The claimant's behavior was unacceptable in her line of work. The claimant's disregard of the employer's interests is misconduct. As such she is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's February 6, 2006 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount provided she is otherwise eligible.

bas/tjc