

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBORAH SPEER
Claimant

APPEAL NO. 13A-UI-05246-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

NEW FOUND HOPE INC
Employer

**OC: 03/31/13
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated April 26, 2013, reference 04, which held that the claimant was not eligible for unemployment insurance benefits. After due notice, a telephone hearing was held on June 20, 2013. The claimant participated personally. The employed participated by Katie Grant, the human resources manager; Christy Stansberry, the lead case manager; and Amy Simpson, the director. The record consists of the testimony of Katie Grant; the testimony of Christy Stansberry; the testimony of Amy Simpson; the testimony of Deborah Speer; Claimant's Exhibits A and B; and Employer's Exhibits 1-17.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer provides home and community based services to individuals with disabilities. The claimant was hired on March 23, 2009. She was a full-time case manager. The claimant was considered terminated as of March 18, 2013.

The claimant was terminated because she failed to sign a contract by 5:00 p.m. on March 18, 2013. The contract was essentially a non-compete contract. The claimant did not know that she would be terminated if she did not sign by the contract by a certain date and time. She did tell the employer that she wanted some time to consider her options.

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. The findings of fact show how the credibility issues were decided in this case. The administrative law judge accepts the claimant's testimony that she did not know that she had to sign the contract by a specific day and time. Her request to review the contract and consider her options was reasonable. The claimant was not insubordinate. Benefits are allowed if the claimant meets all other eligibility requirements.

DECISION:

The decision of the representative dated April 26, 2013, reference 04, is reversed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css