

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JESSICA A CARRINGTON
Claimant

PACKERS SANITATION SERVICES INC
Employer

APPEAL 18R-UI-04360-H2T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 01/21/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 12, 2018, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 2, 2018. Claimant participated. Employer participated through Laura Rivera Lopez, Site Manager.

ISSUE:

Was the claimant discharged due to job-connected misconduct sufficient to disqualify her from receipt of unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a sanitation hoser/cleaner beginning on August 16, 2017 through January 23, 2018, when she was discharged for leaving work early without permission or notification to her supervisor. The claimant was regularly scheduled for an eight hour work shift. She and all other employees were told they were not allowed to leave early, even if their own work was completed unless they had specific permission from their supervisor. The claimant had at least one prior warning for leaving early without notification or permission from her supervisor.

On January 13, the claimant was upset and angry when she believed another coworker was ‘messing up’ her clean work area. Without notifying the supervisor or getting permission to leave claimant punched out, went to her car, and then sent a text message to her supervisor telling him she had left. During a meeting held on January 15, the claimant was specifically told by her supervisor that she could not just leave without permission of her supervisor. On January 22, the claimant felt she was done with her work. Her work shift was not over as an eight hour shift would have ended at around 6:00 a.m. The claimant did not notify her supervisor she was leaving or obtain permission to leave work. She simply punched out around 5:00 a.m. and left work. Her supervisor was looking for her and discovered she had gone. The claimant had been given other prior verbal warnings about her attendance, including one in December 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). It is reasonable for an employer to expect employees to obtain permission to leave work early before their assigned work shift is over.

The claimant was not as credible a witness as the employer witnesses. The claimant had been repeatedly told she could not just leave work when she thought she was done working or when she wanted to because she was frustrated. Just one week prior to the last incident, the claimant was specifically told she could not leave work without permission from her supervisor. The claimant left work without permission again on the night of January 22 and the morning of January 23. Claimant's repeated failure to follow the employer's clear instructions that she not

leave work without permission is evidence of carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. Benefits are denied.

DECISION:

The February 12, 2018, (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs