

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAYLA JOSEPH
Claimant

APPEAL NO. 13A-UI-00658-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

DM SERVICES INC
Employer

OC: 12/02/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated January 11, 2013, reference 02, which held that the claimant was not eligible for unemployment insurance benefits. After due notice, a hearing was held on August 13, 2013, in Davenport, Iowa. The claimant participated personally. The employer participated by Monica Keller, human resources administrator. The record consists of the testimony of Monica Keller; the testimony of Kayla Joseph; Claimant's exhibits A-J; and Employer's Exhibits 1-13.

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 credit administration for affiliates of Colony Brands and twelve other catalogs. The claimant was hired on April 30, 2012, as a credit specialist. The claimant's last day of work was December 7, 2012. She was terminated on December 10, 2012.

The incident that led to the claimant's termination occurred on December 4, 2012. The claimant backed into a parked car in the employer's parking lot. The claimant looked for damage to the parked car but she did not get out of her car to examine the other car. She proceeded to park her car and went into work. The daughter of the employee whose car the claimant hit found the damage and the incident was reported to the employer. The employer reviewed surveillance tape and discovered that the claimant had hit the car. The police were called and the claimant was given a ticket for failure to have insurance and striking an unattended vehicle. The claimant was suspended without pay on December 7, 2012.

The claimant went through a seven-day orientation concerning the employer's policies when she was hired. The employer has a policy that all accidents are to be reported immediately. The employer has zero tolerance for accidents. The decision was made to terminate the claimant.

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 disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. An employer can reasonably expect that an employee will comply with its rules and regulations. The employer has the burden of proof to show misconduct.

The claimant is not eligible for unemployment insurance benefits. The claimant is disqualified not because she was involved in an accident but because she failed to report the accident to the employer. The accident occurred on the employer's premises and a fellow employee's car was damaged. The claimant did not get out of her car to look for damage nor did she inform the employer that she had struck another vehicle in the parking lot. The administrative law judge concludes that the claimant deliberately violated a known rule of the employer. This is misconduct. Benefits are denied.

DECISION:

The decision of the representative dated January 11, 2013, reference 02, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs