

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENDRA W TROMP
Claimant

APPEAL NO: 13A-UI-10002-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC
Employer

OC: 07/14/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Kendra W. Tromp (claimant) appealed a representative's August 22, 2013 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Good Samaritan Society, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 0, 2013. The claimant participated in the hearing. Debbie Hood appeared on the employer's behalf and presented testimony from two other witnesses, Stephanie Strohben and Karen "K. D." Kalber. During the hearing, Employer's Exhibits Five, Seven, Eight, and Nine were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits affirmed.

FINDINGS OF FACT:

The claimant started working for the employer on August 15, 2012. She worked full time as a relief cook at the employer's Davenport, Iowa long-term care nursing facility. Her last day of work was July 17, 2013. The employer discharged her on July 19, 2013. The stated reason for the discharge was reaching termination under the employer's progressive discipline process.

The employer's disciplinary process provides for discharge if an employee reaches three disciplinary write-ups in a year. The claimant had been given a written warning for attendance issues on May 5, 2013 and a second written warning also for attendance issues (tardiness) on June 11, 2013. This second warning specified that "following progressive corrective action this puts Kendra Tromp at a final warning."

The employer did give the claimant a further “written counseling” on July 7 for a repeated dress code violation issue, but chose not to treat it as a third corrective action under the employer’s disciplinary process.

The employer had been experiencing increasing resistance from the claimant on various issues. On July 15 the claimant had worked a regular shift early in the day, but came back later to work an additional shift from 4:30 p.m. to 7:30 p.m. P.M. supervisor, Strohben, meet with the claimant to discuss some of these issues, including continuing dress code issues. After the meeting the claimant went outside for about a five-minute smoke break, even though she had not obtained approval of Strohben. The claimant again took a five-minute smoke break on July 16 without approval. The posted break schedule specified that “anyone who works under a four-hour shift does not get a break.” Particularly as the claimant appeared to be taking these unauthorized breaks as an exercise of defiance, the employer determined that a third disciplinary write-up, resulting in discharge, was necessary.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's defiant taking of unauthorized breaks after having been informed that her job was in jeopardy by being given a final written warning shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's August 22, 2013 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of July 17, 2013. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs