

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CYNTHIA L PELTON

Claimant

APPEAL NO. 14A-UI-11244-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOYS & GIRLS RESIDENTIAL TREATMENT

Employer

OC: 10/05/14

Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated October 27, 2014 (reference 01) which denied unemployment insurance benefits, finding that the claimant was discharged from work for conduct not under the best interests of the employer. After due notice was provided, a telephone hearing was held on November 18, 2014. Claimant participated. The employer participated by Mr. Mark Nielson, Human Resource Director.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Cynthia Pelton was employed by Boys & Girls Residential Treatment from January 12, 2009 until October 9, 2014 when she was discharged from employment. Ms. Pelton worked as a full-time residential treatment therapist and was paid by salary. Her immediate supervisor was Mark Sanderson. In the position of a residential treatment therapist, Ms. Pelton provided support, direction, and counseling to adolescent clients in a residential setting.

On September 18, 2014 Ms. Pelton was issued a criminal citation for selling alcoholic beverages to an underage person. Ms. Pelton was temporarily assisting a personal friend by working as a bartender and had been ticketed after a "sting" operation during which an underage individual who appeared to be over the age of majority had purchased alcoholic beverages from the claimant and the claimant had not checked the purchaser's ID as required. The claimant was ticketed for providing alcohol to an underage person.

Ms. Pelton was aware that company policy required employees report any arrests, convictions, or tickets to the employer as soon as possible. Ms. Pelton delayed reporting receiving the ticket citation in part because she was distracted by other personal issues. Subsequently on or about October 7 she reported the matter to her employer, as required by policy.

Based upon the nexus or connection between the claimant's conduct in selling alcohol to a minor and her employment as a residential treatment therapist, the employer believed that the claimant's conduct would create a negative image for the company and for Ms. Pelton as a treatment therapist dealing with adolescents. More importantly however, the employer concluded that the claimant's delay in reporting the incident was a further violation of company policy and a decision was made to terminate Ms. Pelton from her employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

Iowa Code § 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.

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).

The employer has the burden of proof in this matter. See Iowa Code Section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In the case at hand, the claimant was discharged after she failed to follow the employer's reasonable and work-related rule that required company residential treatment therapists, and similarly situated other employees, to report arrests, convictions, or citations as soon as possible to the employer. Ms. Pelton was aware of the rule and was aware that being cited for providing alcohol to an underage person might have a negative reflection on the employer's business and the claimant's qualifications to do her job, and needed to be reported as soon as possible to the employer so that the matter could be assessed.

The administrative law judge concludes that the ability to promptly report the infraction as required by the company policy was within the claimant's control. The claimant's failure to do so showed a disregard for the employer's interests and standards of behavior that the employer had a right to expect of its employees under the provisions of the Employment Security Law and was disqualifying. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, and she is otherwise eligible.

DECISION:

The representative's decision dated October 27, 2014 (reference 01) is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, and she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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