

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GRICELDA G VAZQUEZ

Claimant

APPEAL NO: 12A-UI-03225-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**COMMUNITY ACTION AGENCY OF
SIOUXLAND**

Employer

OC: 02/12/12

Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Community Action Agency of Siouxland (employer) appealed a representative's March 22, 2012 decision (reference 01) that concluded Gricelda Vazquez (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 12, 2012. The claimant was represented by Dennis McElwain, Attorney at Law, and participated personally. The employer participated by Scot Orban, Human Resources Director.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 9, 2010, as a full-time community services worker. The claimant signed for receipt of the employer's handbook on July 9, 2010. The employer did not issue the claimant any warnings during her employment.

An applicant complained to the employer that the claimant issued her energy assistance on January 25, 2011, and with the same circumstances did not issue her energy assistance in 2012. The applicant told the employer that the claimant did not require her to produce social security cards for the persons living in the residence. The human resources director terminated the claimant on February 14, 2012, based on the applicant's information. The human resources director did not review the file before terminating the claimant. The supervisor reviewed the file but did not testify at the appeals hearing.

The claimant has always required applicants to provide social security cards for all residents of the household. The claimant believes she was terminated based on incorrect information from a disgruntled applicant and because she was injured at work. The claimant remembers a co-worker who was injured at work and then terminated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The employer's witness relied on information provided by others. The employer's witness had no first-hand knowledge of the circumstances for which the claimant was terminated. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's March 22, 2012 decision (reference 01) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css