

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHLEEN J SAWDY
Claimant

APPEAL NO. 11A-UI-05503-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

INTELISTAF HEALTHCARE INC
Employer

OC: 03/20/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(8) – Final Act of Misconduct

STATEMENT OF THE CASE:

Kathleen J. Sawdy filed a timely appeal from an unemployment insurance decision dated April 14, 2011, reference 01, that disqualified her for benefits. After due notice was issued, a telephone hearing was held May 20, 2011 with Ms. Sawdy participating and presenting additional testimony by Tammy Thompson. Exhibit A was admitted into evidence on her behalf. Tom Kuiper of TALX UC eXpress represented the employer, Intelistaf Healthcare, Inc. Regional Director Beth Betz and Office Manager Lisa Han testified. Employer Exhibit One was admitted into evidence.

ISSUE:

Was the claimant discharged for a current act of misconduct?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Kathleen J. Sawdy was employed by Intelistaf Healthcare, Inc. from May 3, 2010 until she was discharged March 24, 2011. She last worked as a staffing and human resources coordinator. Ms. Sawdy, Tammy Thompson and Lisa Han were the only three employees in the company's office in the Des Moines metropolitan area. On March 22, 2011, both Ms. Sawdy and Ms. Thompson were absent because of illness. Ms. Sawdy reported her absence and supported it with documentation from her physician who had prescribed two prescription medicines for her.

Regional Director Beth Betz spoke with Ms. Sawdy about her absence when she returned to work on March 23, 2011. Ms. Betz then reviewed e:mails from Ms. Sawdy's company e:mail account. She discovered that Ms. Sawdy and Ms. Thompson had discussed the impending absences on March 21, 2011. The e:mail messages made Ms. Betz believe that Ms. Sawdy's absence on March 22, 2011 was in bad faith. After reviewing these messages and other e:mails from Ms. Sawdy's company e:mail account, she determined to discharge Ms. Sawdy. She advised Ms. Sawdy of the discharge on March 24, 2011.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for disqualifying misconduct. It does not.

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.

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. See Iowa Code § 96.6-2. Among the elements it must prove is that the final incident leading directly to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8).

The employer's evidence does not persuade the administrative law judge that Ms. Sawdy's absence on March 23, 2011 was in bad faith. Specifically, the employer did not contest Ms. Sawdy's testimony that she had notified the employer, that she had seen her physician and that her physician had prescribed two prescription medications for her. Second, the employer has not persuaded the administrative law judge that Ms. Sawdy's discussion of the impending absence on March 22, 2011 was an act of misconduct. The propriety of the discharge is not in question. After a review of the relevant e:mail messages, the administrative law judge agrees that the comments raised a good faith question in Ms. Betz's mind. Nevertheless, while these comments may justify discharge, they do not descend to the level of misconduct given the evidence that Ms. Sawdy was, in fact, ill. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated April 14, 2011, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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