

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTINA L SHERMAN
Claimant

APPEAL NO. 10A-UI-02886-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRANS TECH SERVICES INC
Employer

**Original Claim: 01/10/10
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 February 17, 2010, reference 01, which denied benefits based upon her separation from Trans Tech Services, Inc. After due notice was issued, a telephone hearing was conducted on April 5, 2010. The claimant participated personally. The employer participated by Ms. Jodi Voigt, co-owner.

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 the evidence in the record, the administrative law judge finds: Kristina Sherman was employed as a full-time medical transcriptionist for Trans Tech Services, Inc. from July 1, 2009, until January 15, 2010, when she was discharged from employment. Ms. Sherman was home-based and was paid per line of medical transcriptioning.

Ms. Sherman was discharged from her employment based upon her failure to meet the employer's requirement of transcribing 1,200 lines per workday. The claimant was not expected to reach that goal on days when there was not sufficient transcribing available or on days when Ms. Sherman had provided notice to the employer that she would be unable to meet goals for reasons related to her work.

Prior to discharging the claimant, the employer had repeatedly warned and counseled Ms. Sherman that she must meet the minimum level of transcription each day. The claimant had demonstrated the ability to meet the employer's expectations and had the necessary transcribing skills, but often did not make the required levels of work due to distractions that occurred by working at home. The claimant provided care for her daughter at home, and other factors that arose unrelated to her employment contributed to Ms. Sherman's lack of productivity. The claimant was given the option of returning to the office to work but declined the offer. When the claimant's substandard performance continued after repeated warnings, a decision was made to terminate Ms. Sherman from her employment.

REASONING AND CONCLUSIONS OF LAW:

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

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 evidence in the record establishes the claimant had the ability to perform her work at the level of 1200 lines of transcriptioning each day but did not do so on a consistent basis. The employer's expectations were reasonable and based upon sufficient work that was available to the claimant. The employer did not expect the 1200-lines-per-day level of transcriptioning on days when that level of work was not available or on days when the claimant had notified the employer of intervening work-related reasons. Although the claimant had been warned by the employer, Ms. Sherman continued to allow home distractions to intervene, resulting in her low performance levels, and had the choice of returning to in-office work but declined to do so.

Although sympathetic to the claimant's situation, the administrative law judge concludes, based upon the evidence in the record, that the claimant's failure to perform at the reasonable level of competence required by the employer showed a disregard for her employer's interests and standards of behavior and thus was disqualifying under the Iowa Employment Security Act. Benefits are withheld.

DECISION:

The representative's decision dated February 17, 2010, reference 01, is affirmed. The claimant is disqualified until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw