

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ERIN L HOUGHTON
Claimant

ATHENA GTX INC
Employer

APPEAL 16A-UI-06152-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/08/16
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 26, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from work for conduct not in the best interest of her employer. The parties were properly notified of the hearing. A telephone hearing was held on June 17, 2016. The claimant, Erin L. Houghton, participated. The employer, Athena GTX, Inc., participated through Mark Darrah, president/CEO; Cesar Gradilla, VP of engineering and R and D; Trent Brown, senior office administrator; and Freeman Jones, director of business development, sales, and marketing. Employer's Exhibit 1 through 13 were received and admitted into the record without objection.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a telemedicine systems manager from November 9, 2015, until this employment ended on May 11, 2016, when she was discharged.

On May 10, 2016, Jones sent Darrah an email reporting that claimant seemed distracted during a meeting earlier that day. (Exhibit 9) He also told Darrah he thought it was strange that a potential business partner had not contacted the employer, according to claimant. (Exhibit 9) Darrah then conducted a forensic review of claimant's work computer and discovered she had been using her work computer for non-work-related purposes, including sending out inquiries about potential jobs with other employers, including businesses that did business with the employer. (Exhibits 1, 2, and 3) Additionally, Darrah discovered claimant had canceled a meeting with a potential customer without notifying him. (Exhibit 4) The following day, Darrah discharged claimant. (Exhibit 10)

Claimant had never been disciplined for either of these issues during her employment. Darrah stressed during his testimony that the employer is not required to give any warning to an employee, per its employee handbook and its role as a government contractor. (Exhibit 11, page 5) Claimant testified that she was concerned her job was in jeopardy, due to work performance concerns. Darrah never told her that he had issues with her performance.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation.

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. For unemployment insurance benefits purposes, the inquiry is not whether claimant could be discharged under the employer's employee handbook or internal rules. Rather, the inquiry is whether claimant's separation entitles her to benefits as a matter of law.

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning.

Here, claimant was never warned by the employer that any of her conduct violated any work rule or that any of her behavior was problematic. The employer's employee handbook is not sufficient to put claimant on notice that her conduct specifically was an issue. The conduct for which claimant was discharged was merely an isolated incident of poor judgment. As the employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

DECISION:

The May 26, 2016, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Elizabeth Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/pjs