

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANITA A STENDER
Claimant

APPEAL NO. 10A-UI-03156-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

J A LECHTENBERG JR
Employer

**OC: 01/31/10
Claimant: Respondent (1)**

Section 96.5-2-A – Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated February 18, 2010, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 12, 2010. Claimant participated. Employer participated by Chris Berg, Office Manager; Michelle Wing, Business Manager; and Pam Murphy, Receptionist. The record consists of the testimony of Chris Berg; the testimony of Pam Murphy; the testimony of Michelle Wing; the testimony of Anita Stender; and Employer's Exhibit A.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a dental practice located in Maquoketa, Iowa. The claimant was hired on January 25, 2010, as a receptionist and to work at the front desk. The claimant's duties were to answer the phone; schedule appointments, collect payments and greet patients. She was terminated on February 1, 2010.

Prior to coming to work for this employer, the claimant had worked as a dental assistant and an orthodontic assistant. She had had some cross training as a receptionist, but no extensive experience. The claimant was unfamiliar with the employer's computer software and felt uncomfortable doing the job she had been hired to do. Her expectation was that she would receive training, which she thought would be job shadowing. The employer preferred to provide hands on training, that is, the claimant learned the job by actually doing the job. The claimant was resistant to this type of training and the employer was resistant to the claimant's request to job shadow.

The employer received three patient complaints about the claimant. In addition, the employer felt that the claimant was reluctant to even try to perform the job. Ms. Wing and Ms. Berg decided that the claimant was not a satisfactory employee. The decision was made to terminate the claimant. She was informed that the employer did not feel “like it was working out” and that “she was not the right choice.”

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes mere inefficiency and failure in good performance the result of inability or incapacity. The employer has the burden of proof to show misconduct.

The evidence in this case shows that the claimant was unable to perform the job to the satisfaction of the employer. The employer believed that the claimant had the experience necessary to learn the job “hands on” whereas the claimant wanted a period of time to job shadow. The claimant did not feel comfortable with the job and her experience as an assistant in a one person dental/orthodontic office did not equip her for the receptionist position with this employer. The employer felt that the claimant's requests to job shadow and observe were disrespectful of the training methods used in this office.

The employer had the right to make a business decision and terminate the claimant. There is insufficient evidence, however, to show that the reason for terminating the claimant was anything other than her inability and perhaps unwillingness to learn her new job as desired by the employer. Unsatisfactory performance is not misconduct for purposes of disqualifying the claimant from receiving unemployment insurance benefits. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated February 18, 2010, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css