

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY R SMITH
Claimant

APPEAL NO. 10A-UI-06418-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OPERATION THRESHOLD INC
Employer

**Original Claim: 03/21/10
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Kimberly R. Smith filed a timely appeal from an unemployment insurance decision dated April 21, 2010, reference 01, that disqualified her for benefits. After due notice was issued, a telephone hearing was held June 30, 2010, with Ms. Smith participating. Craig Boche, LeKeisha Veasley, Mindy Dolan, and Billie Allen Williams participated for the employer, Operation Threshold, Inc. Employer Exhibit One and Claimant Exhibit A were admitted into evidence.

ISSUE:

Was the claimant discharged for misconduct in connection with her employment?

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: Kimberly R. Smith was employed by Operation Threshold, Inc. from August 10, 2004, until she was suspended on March 16, 2010, and subsequently discharged on March 22, 2010. She last worked as a family development specialist.

On March 15, 2010, Mindy Dolan, the claimant's supervisor, instructed her to have a client provide proof of insurance for her automobile. Ms. Smith argued with Ms. Dolan about the instruction. She walked away from Ms. Dolan without acknowledging that she would do as instructed. She was suspended by Ms. Dolan and Human Resources Director Craig Boche on the following day. She was instructed to leave the premises, not to return to the office, and not to pick up her planner at its current location. Ms. Smith did not follow instructions. She retrieved the planner and went to the employer's office. This led to Ms. Smith's discharge on March 22, 2010.

In addition to the incidents related above, the employer also considered a general pattern of argumentative behavior from Ms. Smith when given instructions by her supervisor. Specifically, on March 8, 2010, the office at which Ms. Smith worked suffered a power outage. LeKeisha Veasley was the supervisor on duty at the time. She gave the staff several options, which

included making client visits, working from the main office, or taking vacation. She asked that each employee tell her of their intentions so that she could notify her supervisor, Billie Allen Williams. Ms. Smith started to leave the premises without telling Ms. Veasley of her intentions.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. It does.

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.

Insubordination, the refusal to follow reasonable instructions, is one form of misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). Failure to perform a specific task may not constitute misconduct if the failure is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768 (Iowa App. 1982). In analyzing a case of this nature, the administrative law judge evaluates both the reasonableness of the employer's request in light of the circumstances and the employee's reason for non-compliance. See Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa App. 1985).

After reviewing the evidence in this record, the administrative law judge finds that the employer was acting reasonably in instructing the claimant to leave the premises, not to return to pick up her planner, or to return to the main office at the time of the suspension. The claimant offered no explanation for her disobedience. The evidence also establishes that the employer was

reasonable in instructing Ms. Smith to contact her client so that the client would provide the necessary proof of insurance. It was reasonable in instructing Ms. Smith and other employees to announce their intentions before leaving their office at the time of the power outage. The claimant did not provide explanations for her failure to follow these reasonable instructions. The administrative law judge concludes that the evidence is sufficient to establish misconduct. Benefits are withheld.

DECISION:

The unemployment insurance decision dated April 21, 2010, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw