

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**FELICIA FRIEND
2823 AVE A
COUNCIL BLUFFS IA 51501**

**VANDEL OF NEBRASKA INC
HOME STYLE LAUNDRY
900 WOODBURY AVE
COUNCIL BLUFFS IA 51503-7855**

**Appeal Number: 06A-UI-03670-H2
OC: 03-05-06 R: 01
Claimant: Respondent (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge/Misconduct
Section 96.3-7 - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 23, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held in Council Bluffs, Iowa on May 23, 2006. The claimant did not participate. The employer did participate through Barbara Calderon, Owner and Jack Calderon, Owner. Employer's Exhibits One and Two were entered and received into the record.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a laundry attendant part time beginning March 1, 2005 through March 4, 2006, when she was discharged. The current owners of the laundry facility bought the

business on November 22, 2005, and the claimant was kept on as an employee. The claimant was warned in writing (Employers Exhibit Two) on February 24 regarding a number of issues, including complaints from customers of the laundry facility. After being warned the claimant made no comment to the employer nor did she deny any of the allegations made against her.

In early March 2006 a customer told the owners, Mr. and Mrs. Calderon, that he overheard the claimant making disparaging remarks about them on February 26 while he was in the store to do his laundry. Numerous customers heard the claimant's comments. The claimant was making demeaning comments about the owners and their business decision in front of the customers. When the owners learned of the claimant's behavior, they confronted her. The claimant did not deny her comments or offer any explanation for her behavior. The claimant was discharged for her comments on February 26.

The claimant has claimed and received unemployment insurance benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

An employee certainly has a right to disagree with how an employer chooses to run a business. That right however, does not translate into permission to bad mouth or demean the employer in the business in front of customers. The claimant had previously been warned about her comments and actions in front of customers, yet she choose to air her personal opinions, grievances and concerns in front of customers and to customers on February 26, just two days after her written warning. The employer has a right to expect employees not to bad mouth them or disparage them in front of customers. Such conduct by employees certainly does not appeal to customers as is evidenced by the customer complaints about the claimant's behavior on that day. The claimant knew or should have known that her behavior was not in the employer's best interests. The claimant's action, in light of her previous discipline constitutes disqualifying misconduct. Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The March 23, 2006, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$630.00.

tkh/kkf