

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBRA A SOUKUP
Claimant

APPEAL NO. 07A-UI-06291-D

**ADMINISTRATIVE LAW JUDGE
DECISION**

CONNIE'S CLEANING SERVICE
Employer

**OC: 03/11/07 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Debra A. Soukup (claimant) appealed a representative's June 14, 2007 decision (reference 03) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Connie's Cleaning Service (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 11, 2007; this was then recessed and reconvened as an in-person on August 20, 2007. This appeal was consolidated for hearing with one related appeal, 07A-UI-06292-D. The claimant participated in the hearing on both dates. Connie Copper-Render appeared on the employer's behalf on both dates. Testimony was presented by one other witness, Robert Copper, on behalf of the employer on July 11, and by one other witness, Angela Cook, on behalf of the claimant on August 20. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 21, 2006. She worked as a residential cleaner at the employer's house cleaning business. Her last day of work was May 18, 2007. The employer discharged her on May 21, 2007. The stated reason for the discharge was refusing to report for work as directed.

Since about March 7, 2007 the claimant had been scheduled to work about 28 to 32 hours per week, normally working about three days out of the week. The employer had prior concerns about the claimant seeking to take off other days for personal business than what she had been scheduled to be off, which was discussed with her in late April 2007. The claimant was scheduled for work May 21; she was to report to Ms. Copper-Render's home to depart with the cleaning crew by 8:00 a.m. However, on the evening of May 20 the claimant had given a ride home to Mr. Copper, Ms. Copper-Render's father and the claimant's husband's employer. Mr. Copper had commented to the claimant that the claimant's brakes were making a lot of

noise and needed to be fixed. He and the claimant discussed whether she could get the car in for service the next day, May 21. The claimant indicated she was scheduled to work that day, and Mr. Copper agreed he would speak to Ms. Copper-Render about the matter. Mr. Copper is not involved in Ms. Copper-Render's cleaning business.

Mr. Copper did speak to Ms. Copper-Render on the evening of May 20; as a consequence of that discussion, he called the claimant yet that evening at approximately 9:00 P.m. and indicated that in order to resolve the matter for the next day the claimant would need to speak to Ms. Copper-Render directly. However, the claimant did not proceed to contact Ms. Copper-Render. The next morning, the claimant did not report for work by 8:00 a.m. At approximately 8:15 a.m. she discovered that Ms. Copper-Render had attempted to call her at approximately 8:00 a.m. to find out where she was; the claimant then returned the call.

The claimant was still at home at 8:15 a.m.; she had made an appointment to take her car in at approximately 10:00 a.m. When she returned the call to Ms. Copper-Render, Ms. Copper-Render told the claimant that she had to be at work that day, that the crew was starting a new client and needed everyone there. The claimant declined, indicating she was taking her car in to be worked on. Ms. Copper-Render insisted, indicating that the claimant could have the work done on a different day or that she could get a ride to work from either Ms. Copper-Render's father or mother. The claimant declined. Ms. Copper-Render further insisted, telling the claimant that if she did not come in to work that day that she would be fired. The claimant still declined. As a result, Ms. Copper-Render discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

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.

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 focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer's interest, or
 2. The employee's duties and obligations to the employer.

The claimant's refusal to report for and perform work as assigned even when given an explicit directive and other transportation options shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's June 14, 2007 decision (reference 03) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of May 21, 2007. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css