

**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**

**FELISA R DANIELS
2417-3 PETSSEL PL
IOWA CITY IA 52246**

**THE UNIVERSITY OF IOWA
c/o DAVE BERGEON EMPLOYER
RELATIONS
121 R UNIVERSITY SERVICES BLDG
IOWA CITY IA 52242**

**JEFF TRONVOLD
ATTORNEY AT LAW
1921 – 51ST ST NE
CEDAR RAPIDS IA 52402**

**Appeal Number: 05A-UI-06643-S2T
OC: 05/15/05 R: 03
Claimant: Appellant (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 for Misconduct

STATEMENT OF THE CASE:

Felisa Daniels (claimant) appealed a representative's June 13, 2005 decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with The University of Iowa (employer) for conduct not in the best interest of the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 13, 2005. The claimant was represented by Jeff Tronvold, Attorney at Law, and participated personally. The employer participated by David Bergeon, Human Resources Specialist 2; Carol Wehby, Administrative Assistant; Ellen Twinam, Human Resources Generalist 2; and Sandra Reed, Senior Research Assistant. The claimant offered one exhibit which was marked for identification as Exhibit A. Exhibit A was received into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 15, 2003, and at the end of her employment was working as a full-time program assistant. She received no warnings during her employment. The employer has a progressive disciplinary policy, but the policy did not apply to the claimant because she held her last position for less than two years.

The claimant complained to the employer about a hostile work environment in March 2005. A Caucasian co-worker displayed a picture of a Ku Klux Klan member in her cubicle. In addition, that same co-worker would not cooperate when the claimant tried to carry out her job duties. The co-worker frequently answered the claimant's questions with "yes um." The African American claimant found the behavior to be offensive and complained to the employer. After the complaint was e-mailed, the claimant and her supervisor had problems communicating.

On or about March 2005, a work life consultant was coming to the claimant's department. The claimant thought it was a good idea. The supervisor understood the claimant to say she would not attend the meetings. The claimant attended regular staff meetings. The supervisor and claimant agreed that the claimant would attend coordinator meetings during the portion of the meeting which related to the claimant. Later, the supervisor thought the claimant refused to attend these meetings. The supervisor never expressed any concerns to the claimant.

On May 11, 2005, the employer asked the claimant not to pursue her job duties with regard to the co-worker whose behavior was offensive. On May 12, 2005, the claimant attended a session on how to pursue an advanced degree. After the session, the claimant told her supervisor she wanted to obtain an advanced degree and would not let anyone stand in her way. The employer thought the claimant was referring to her and asked the claimant if she were threatening the employer. The claimant responded that she would do what she needed to do to accomplish her goals. The employer did not feel frightened or threatened but reported the claimant's behavior to the employer.

On May 16, 2005, the employer terminated the claimant for threatening her supervisor. The employer did not tell the claimant this was the reason for the termination nor did they mention the incident. The employer told the claimant she was terminated because it was concerned about her performance and interpersonal communications with co-workers.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes she was not.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer discharged the claimant and has the burden of proof to show misconduct. The employer did not provide sufficient evidence of misconduct at the hearing. The claimant was unaware of any concerns that the employer had regarding her. The employer told the claimant she was terminated for problems with her communication skills, but the employer never communicated any problems. The employer failed to communicate the precise reason for the termination to the claimant. The employer has not proven that the claimant's words on May 12, 2005, were threatening or frightening to the listener. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's June 13, 2005 decision (reference 02) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

bas/sc