

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOLENE M HORTON
Claimant

APPEAL NO. 08A-UI-00605-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FT DODGE CORRECTIONAL FACILITY
Employer

**OC: 12/23/07 R: 01
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 15, 2008, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on February 4, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Cheryl Rothmeyer participated in the hearing on behalf of the employer with witnesses, Brett Mitchell and Cornell Smith. An identical decision was issued on February 1, 2008, reference 04, because the claimant had canceled the claim for benefits that was effective December 23, 2007, and filed a substitute claim effective January 6, 2008. The parties agreed that the appeal filed by the employer on January 18, 2008, could be treated as an appeal from the February 1, 2008, reference 04, decision. This decision is identical to the decision in appeal number 08A-UI-01046-SWT.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as a food services coordinator for the employer from July 27, 2007, to December 27, 2007. Brett Mitchell was her supervisor. When she was hired, she was placed on a six-month probationary period.

Mitchell discharged the claimant on December 27, 2007, for poor work performance during her probationary process. The final incident that led to her discharge was untimely submission of a travel reimbursement request. The claimant had traveled for pre-service training in September 2007, but did not submit the travel reimbursement request until November because she was never instructed that there was a time limit or guideline for submitting such requests. That request was rejected because the claimant had listed the meals to be reimbursed at the limit for reimbursement rather than the exact amounts. She had been told that if her meals were over the maximum-allowed expense, that she did not have to put the exact amount of the bill. The claimant resubmitted the form with amounts of the meals on December 17, 2007.

The claimant was also discharged for the following past acts. On September 1, September 4, and October 12, she was counseled for using her computer for personal use. On October 12, she was coached about not disclosing any personal information to inmates. On October 29, she was counseled for failing to report a sexual comment made by her ex-husband who worked as a correctional officer at her facility. The claimant did not respond to the comment. On November 18, the claimant was counseled about limiting the amount of bread inmates could have at a meal based on running short of that item. The employer considered this to be unauthorized menu change. The claimant did not believe she was changing the menu. She was warned on November 20 for failing to respond forcefully no to an inmate asking her for liquor. She was late for work due to a flat tire on December 3. She forgot to bring her identification card to work on November 20 and December 7.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be

based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

Whether considered alone or in conjunction with past conduct, the claimant's failure to file her travel reimbursement request sooner does not constitute a current act of work-connected misconduct as defined by the unemployment insurance law. The employer has not established there was a time limit for submitting such reimbursement requests. The claimant testified credibly that she had not been instructed on any time limits for submitting travel reimbursement requests. At most the employer has established unsatisfactory work performance which does not meet the standard of disqualifying misconduct.

DECISION:

The unemployment insurance decision dated January 15, 2008, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs