

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MYRNA ESPINOZA
Claimant

APPEAL NO. 13A-UI-03831-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DILLARD'S INC
Employer

OC: 03/03/13
Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Myrna Espinoza (claimant) appealed an unemployment insurance decision dated March 21, 2013, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Dillard's, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 27, 2013. The claimant participated in the hearing. The employer participated through Bonny Noel, Linda Harris and Robert Deneui. Employer's Exhibits One through Three were admitted into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

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 employed as a full-time associate from February 8, 2011 through February 28, 2013 when she was discharged for insubordination. On February 24, 2013, three employees were absent so the remaining associates needed to be moved around to different areas. The assistant store manager told the claimant to go to a different cash register and the claimant questioned her and refused. The claimant argued with the manager so she was told to come to the office but refused that also. The manager told her to go home but the claimant refused to follow that directive also. She eventually went back to the manager's office and began yelling and cursing at the manager in front of other employees before she eventually left.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

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 employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on February 28, 2013 for insubordination and a repeated failure to follow directives. Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant refused multiple, reasonable directives from the assistant store manager on February 24, 2013, in addition to yelling and cursing. While she denies cursing, she does admit refusing directives because she felt the assistant store manager had an "attitude." When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. Benefits are denied.

DECISION:

The unemployment insurance decision dated March 21, 2013, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css