

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CUTINA JONES**

Claimant

**APPEAL NO: 11A-UI-09495-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HILLS AND DALES CHILD DEVELOPMENT**

Employer

**OC: 06/19/11**

**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's July 13, 2011 determination (reference 03) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. Reference 03 pertains to the employer's account for a reimbursable employer. The claimant participated in the hearing. Carol Boge and Katherine Grebin appeared on the employer's behalf. During the hearing, Employer Exhibits One, Two and Three were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working as a full-time personal assistant for the employer in December 2006. Grebin supervised the claimant's immediate supervisor and saw the claimant almost daily.

In November 2010, the claimant had an interaction with a supervisor that was considered argumentative. The employer sent the claimant home for insubordination, but did not give her a warning. The claimant believed Grebin treated the claimant unfairly by disciplining her when coworkers made a complaint about the claimant, but did nothing when the claimant made complaints.

During a team meeting on June 15, 2011, Grebin asked the claimant and other team members for comments. When it was the claimant's turn to say something she said very softly, "You don't care." Grebin asked the claimant to repeat what she said because she had not heard her and the claimant again said, "Don't care." Grebin concluded the claimant was not being respectful during the meeting and asked her to stay afterwards. After the claimant asked why she wanted to talk to her, Grebin told the claimant she needed to punch out and go home. The claimant immediately told Grebin she wanted to talk to Boge, the human resource manager.

The claimant left the room, punched out, called a cab to take her home and started completing a complaint form in the break room. After the claimant left, Grebin talked to Boge who was in a meeting. Boge was unable to talk or meet with the claimant right away. She advised Grebin that the claimant could wait in the reception area or outside for her ride home. When the claimant learned Grebin had talked to Boge, she questioned why Grebin could talk to Boge, but she could not. The claimant left the break room as Grebin told her to and went to the reception area. While in the reception area, the claimant asked the receptionist if she could talk to Boge. The receptionist called for Boge and again told the claimant she was not available to talk to the claimant. Boge stepped out of her meeting and talked to the claimant to let her know she would have to meet with her later. When Boge advised the claimant to follow her supervisor's directions, the claimant told her she had. Before Boge had an opportunity to talk to the claimant, Grebin made the decision to discharge the claimant. Grebin did not like the claimant's tone, body language or comments on June 15. She considered the claimant disrespectful. She also considered the claimant insubordinate when she indicated she would not leave until she had talked to Boge. Grebin told the claimant to go to the break room, punch out and leave. The claimant went to the break room, punched out and was completing a complaint against Grebin until she was told to wait for the cab either in the reception area or outside.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The evidences indicates the claimant and Grebin did not get along or a had personality conflict. If the claimant made complaints about other employees and nothing changed while the employer kept talking to the claimant about complaints others employees made about her, it is understandable why the claimant made the comment, "You don't care." Since the claimant believed Grebin treated her unfairly, it was logical and reasonable for the claimant to talk to Boge as soon as possible. Even though the claimant tried to find out why Grebin was talking to her after the meeting, Grebin would not discuss the issue with the claimant. Instead, she told the claimant to punch out, go home and the employer would contact her later.

Based on the evidence presented during the hearing, the employer did not establish that the claimant committed work-connected misconduct. The claimant used poor judgment when she asked the receptionist if she could talk to Boge after Grebin told her she was not available. Since Grebin had talked to Boge and the claimant did not trust Grebin it is understandable why the claimant asked to talk to Boge. The facts indicate Grebin made incorrect conclusions about the claimant on June 15. While the claimant may not have been a model employee during the team meeting or after she was told to go home, she was not insubordinate. As of June 19, 2011, the claimant is qualified to receive benefits.

**DECISION:**

The representative's July 13, 2011 determination (reference 03) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of June 19, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css