

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANGIE D LYBARGER**  
Claimant

**APPEAL NO. 07A-UI-08322-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VIKING MAGAZINE SERVICE INC**  
Employer

**OC: 07/29/07 R: 02**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Angie D. Lybarger (claimant) appealed a representative's August 24, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Viking Magazine Service, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 20, 2007. The claimant participated in the hearing. Andrew Bond appeared on the employer's behalf and presented testimony from one other witness, Sondra Harness. 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 20, 2005. She worked part time (25 – 33 hours per week) as a sales representative at the employer's Ames, Iowa, call center. Her last day of work was July 27, 2007. The employer discharged her on July 30, 2007. The stated reason for the discharge was repeated insubordination.

The claimant had received several prior verbal warnings and at least one written warning regarding confrontations and insubordination, most recently on July 2, 2007, when she was warned that she was facing termination if the behavior continued. On July 27 the claimant had a verbal confrontation with her supervisor when she asked her supervisor about follow up on prospective sales she had turned over for closure and her supervisor responded in a disparaging manner, suggesting the claimant was responsible for the prospects being poor credit risks, when the claimant was not responsible for making inquiries in that regard. When the discussion between the claimant and the supervisor became disruptive, they were summoned into the office of Mr. Bond, the center manager.

While in Mr. Bond's office, the claimant continued to be loud and upset, pointing her finger close to the supervisor's face. Mr. Bond told the claimant she needed to settle down and that she was

being inappropriate; she responded that she had not been upset before but she was now, and continued to be loud. When the claimant did not settle down after several instructions by Mr. Bond to do so, he took her to the office of Ms. Harness, the assistant center manager, to speak with her away from the supervisor. While in Ms. Harness' office, the claimant continued to be loud and unresponsive to Mr. Bond's instructions to settle down. He then sent her home for the day, and after a review of the prior history, a decision was made to discharge 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 failure to comply with Mr. Bond's instructions to quiet down or settle down on July 27, after prior warning regarding confrontations and insubordination, 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 August 24, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of July 27, 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.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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