

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REBECCA A MORGAN
Claimant

APPEAL NO. 08A-UI-11190-C

**ADMINISTRATIVE LAW JUDGE
DECISION**

LINT VAN LINES INC
Employer

OC: 12/19/08 R: 02
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Lint Van Lines, Inc. (Lint) filed an appeal from a representative's decision dated November 21, 2008, reference 01, which held that no disqualification would be imposed regarding Rebecca Morgan's separation from employment. After due notice was issued, a hearing was held on December 29, 2008 in Des Moines, Iowa. Ms. Morgan participated personally and Exhibit A was admitted on her behalf. The employer participated by Naren Cunningham, Human Resources Director, and Ginger Allen, Customer Service Manager. Exhibits One through Four were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Morgan was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Morgan was employed by Lint from January 25, 2006 until October 23, 2008. She was employed full time as a relocation coordinator. She was given a written warning and one-day suspension on September 4, 2008 for using profanity at the workplace. Ms. Morgan signed the warning form but did not write anything in the "Employee Comments" section.

The decision to discharge Ms. Morgan was due to a report the employer received on October 23, 2008. Kerry Bell, a customer service employee, told Ginger Allen that Ms. Morgan and another employee, Gail Bishop, had asked her to eavesdrop on a closed-door meeting between Ms. Allen and Naren Cunningham on October 21. Ms. Bell stated that the two told her about a former employee who would go into the "Betty Malone" room, place her ear to the wall, and listen to private conversations between Ms. Allen and Ms. Cunningham.

The employer met with both Ms. Morgan and Ms. Bishop on October 23. Both denied that they asked Ms. Bell to eavesdrop on the meeting. Both indicated that the subject was brought up only as a joke. They both acknowledged that the former employee told them she was listening

in on meetings and that the subject had not been brought to the attention of management. As a result of what was reported by Ms. Bell, Ms. Morgan was discharged on October 23, 2008.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). For reasons that follow, it is concluded that the employer has failed to satisfy its burden of proof. The decision to discharge was prompted by the report from Ms. Bell. The administrative law judge cannot find that Ms. Bell was directed to eavesdrop on the meeting between Ms. Allen and Ms. Cunningham. The administrative law judge believes that there was a comment made suggesting that Ms. Bell eavesdrop. However, the administrative law judge is satisfied that the comment was jokingly made. Ms. Bell was not offered as a witness to provide testimony concerning the context in which the comment was made.

Ms. Morgan's discharge was also based on the fact that she had not reported the fact that a former employee was possibly eavesdropping on private meetings. Although she may have demonstrated poor judgment in not reporting her coworker, her inaction did not evince a willful or wanton disregard for the employer's interests or standards. Her failure did not constitute substantial misconduct as is required for a disqualification from benefits. See Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The employer failed to establish that Ms. Morgan's discharge was predicated on conduct that constituted misconduct within the meaning of the law. It is true that she had been disciplined on September 4, 2008 for using profanity at work. Past acts of misconduct may be considered in determining the magnitude of a current act of misconduct. However, a disqualification from benefits must be based on a current act that constitutes misconduct. Inasmuch as the employer failed to establish that the conduct of October 21 constituted misconduct within the meaning of the law, the administrative law judge is not free to consider past acts. See 871 IAC 24.32(8). While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons cited herein, benefits are allowed.

DECISION:

The representative's decision dated November 21, 2008, reference 01, is hereby affirmed. Ms. Morgan was discharged by Lint but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css