

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDY R HAWKINS
Claimant

APPEAL NO. 06A-UI-09463-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IA DEPT OF HUMAN SVCS/GLENWOOD
Employer

**OC: 08/20/06 R: 01
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Iowa Department of Human Services/Glenwood (employer) appealed a representative's September 13, 2006 decision (reference 01) that concluded Brandy R. Hawkins (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 10, 2006. The claimant participated in the hearing. Raul Ybanez, a TALX representative, appeared on the employer's behalf with Pam Stipe as the employer's witness.

At the beginning of the hearing, the employer requested that the hearing be continued because one of the employer's witnesses had a conflict and was unable to participate in the hearing. The request was denied because the employer did not know when the witness knew about the other meeting she had to attend. Also, the employer's witnesses only received notice from TALX on October 9 that they were involved in an October 10 hearing with the claimant. Since the hearing notice was mailed on September 27, the employer's representative had a reasonable amount of time prior to the hearing to contact the employer's witnesses and ascertain if any of the witnesses had a conflict. As a result the employer's request for a continuance at the time of the hearing, was denied.

During the hearing, Employer's Exhibit One was offered and admitted as evidence. 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:

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

FINDINGS OF FACT:

The claimant started working for the employer on November 9, 2004. At the time of hire the claimant received a copy of the employer's rules. The claimant understood that in accordance with the employer's rules, employees had to cooperate, be honest in any written or oral statements and could not impede any investigation.

In early June 2006, the employer was investigating an incident involving another employee. An employee, K., who was a witness to the incident the employer was investigating, reported that the claimant told her what to tell the investigator, which was different than K.'s initial report had been. As a result of K.'s report that the claimant told her to change her version of what happened, the employer suspended the claimant with pay on June 8, 2006.

The employer then investigated K.'s report to determine if the claimant violated work rule B-10. Although the claimant denied telling K. anything about the investigation, the employer concluded the claimant violated work rule B-10 by failing to fully and truthfully cooperate in an investigation. The employer discharged the claimant on August 21, 2006.

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 employer discharged the claimant for what K. reported the claimant told her to do regarding the investigation of another employee. Since K. was not at the hearing to testify and K. and the claimant were the only people present when the claimant allegedly told K. to change her version of what happened, the claimant's testimony as to what was said between the two of them must be given more weight than the employer's reliance on hearsay information from any other witness who was not part of that conversation. The facts do not establish that the claimant violated work rule B-10.

The employer may have had compelling business reasons for discharging the claimant. The evidence does not establish that the employer discharged her for reasons constituting work-connected misconduct. As of August 20, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's September 13, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of August 20, 2006, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/cs