

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

KAREN M GAULE
2359 MAHAFFEE BRG RD APT A
NORTH LIBERTY IA 52317

THE UNIVERSITY OF IOWA
c/o DAVE BERGEON
EMPLOYEE RELATIONS
121 "R" UNIVERSITY SERVICES BLDG
IOWA CITY IA 52242-1316

Appeal Number: 06A-UI-07624-DT
OC: 07/02/06 R: 03
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The University of Iowa (employer) appealed a representative's July 28, 2006 decision (reference 01) that concluded Karen M. Gaule (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 16, 2006. The claimant participated in the hearing and presented testimony from one other witness, Larry Bartlett. Julie Hostager appeared on the employer's behalf and presented testimony from one other witness, Sylvia Robinson. 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 January 22, 2002. She worked full-time as a food service coordinator in the employer's food service system. She originally worked a 12-month schedule in a position based in the library building food service. In March 2006, she was approved for transfer to a nine-month position that would have been in a different building food service center. Her first day of work in the new position would have been August 14, 2006. Since she was making the transfer, her work in the library location was scheduled to end on May 12, 2006, which became her last day of work.

The claimant had received prior disciplinary actions including two suspensions, the most recent of which was July 28, 2005. The underlying issue regarding most of the disciplinary actions was a complaint by student employees alleging inappropriate or unprofessional behavior or communications on the part of the claimant. The claimant acknowledged receiving the disciplinary actions, but asserted that she had not had a reasonable opportunity to defend herself against the charges leading to the prior actions.

On or about May 5, 2006, a human resources representative contacted the claimant and advised her she had received a complaint about the claimant that she was investigating and she asked many questions, but did not identify the allegations. On about May 11, 2006, the human resources representative informed Ms. Hostager, the food services supervisor, that she had received a complaint from a student employee that the claimant had instructed her to leave class early in order to be to work on time, and also from a customer that the claimant was rude or demeaning to employees, specifically with regard to allegedly being patronizing toward a student employee with limited English abilities. No specifics were provided as to when the complaints were received or when the alleged incidents were to have occurred. At the hearing, the claimant denied ever telling a student employee that they should leave class early to get to work on time. She further acknowledged that it was sometimes difficult communicating with employees with limited English abilities and that sometimes she had to walk through instructions very simplistically and multiple times, but she denied doing it in such a manner as to demean the employee.

The human resources representative advised Ms. Hostager on May 11 that given the claimant's prior disciplinary actions she was going to conduct a more in-depth investigation. On or about June 9, 2006, the human resources representative advised Ms. Hostager that she had completed her investigation and had concluded that the claimant had a pattern of unprofessional behavior and treatment of employees. No other specifics were given regarding the findings. The human resources representative instructed Ms. Hostager to send the claimant a letter of termination, which she did.

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). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment

insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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.

Henry, supra. The reason cited by the employer for discharging the claimant is continued unprofessional behavior and treatment of employees after prior disciplinary actions, evidenced by the alleged new complaints of a student employee and a customer. However, the claimant denied the underlying allegations. No first-hand witness was available at the hearing to provide testimony to the contrary under oath and subject to cross-examination. The employer relies exclusively on the third-hand account from the employer's human resources representative; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether the complainants are credible. Further, there is no current act of misconduct as required to establish work-connected misconduct. 871 IAC 24.32(8); Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988). The employer could not identify when the incidents complained of were to have occurred; clearly, it would have had to have been at least a month prior to the employer's discharge of the claimant. While the claimant knew there was some investigation in early May, when she did not hear anything further by May 12, she reasonably concluded that the investigation had been closed out with no action. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's July 28, 2006 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

ld/cs