

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER L ROSS
Claimant

APPEAL NO. 10A-UI-02099-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**MIDWEST CHECK CASHING
ENTERPRISES**
Employer

OC: 01/03/10
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Employer filed a timely appeal from a representative's decision dated February 5, 2010, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on March 22, 2010. Claimant participated personally. The employer participated by Julie Polson, Rick Smith and Shannon Holmquist. Exhibits One through Five were received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Jennifer Ross was employed by Midwest Check Cashing Enterprises from September 17, 2007 until December 30, 2009 when she was discharged for making threatening statements. Ms. Ross worked as a full-time teller and was paid by the hour. Her immediate supervisor was Rick Smith. The claimant was discharged after she made a statement that the employer reasonably considered to be threatening on December 28, 2009. The employer had rejected the claimant's request for a pay advance. Ms. Ross who was upset stated publicly, "How would they feel if I blew up all the easy money stores?" The claimant who was angry was yelling and the statements were heard by other employees as well as company clients.

After the matter was reported to company management by employees and a customer had specifically complained about the threat, the yelling and the claimant's profanities, a decision was made to terminate Ms. Ross from her employment.

The claimant was aware that making threats of violence was a violation of company policy and could result in her termination from employment.

It is the claimant's position that she did not violate company policy.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is.

Iowa Code section 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.

Ms. Ross was discharged after company employees and a customer complained that the claimant had made inappropriate and threatening statements publicly on December 28, 2009. The employer investigated and determined that the claimant had been upset using profanities and raising her voice and that the claimant had made a statement that could reasonably be interpreted as being threatening and/or terroristic in nature. The evidence in the record establishes that the claimant was aware that conduct of that nature was a violation of company policy and could result in her termination from employment. The claimant's conduct was contrary to the employer's interests and standards of behavior that the employer had a reasonable right to expect of its employees under the provisions of the Employment Security Law. The employer has sustained its burden of proof in showing the claimant's discharge took place under disqualifying conditions. Benefits are withheld.

The claimant has received unemployment insurance benefits to which she is not entitled.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated February 5, 2010, reference 01, is reversed. Jennifer Ross is disqualified. Unemployment insurance benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided that she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs