

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALLISON K JULIUS
Claimant

APPEAL NO. 08A-UI-05491-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**AMERICAN GENERAL FINANCE MGMT
CORP**
Employer

**OC: 05/18/08 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated June 9, 2008, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 25, 2008. The claimant participated personally. Participating as a witness was Nicki Lewis. The employer participated by Mr. Eric Gude, District Manager.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with her work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from July 2007 until May 7, 2008 when she was separated by the employer. Ms. Julius was employed as a full-time customer account specialist and was paid by the hour. Ms. Julius was separated from her employment on May 7, 2008 based upon the employer's belief that the claimant would be leaving the company to relocate to a different geographic area, and the company's desire to insure adequate staffing. Ms. Julius had on numerous occasions in the past made references to her plans to move to a different geographic area to attend law school upon her graduation from under graduate courses. When Mr. Gude met with the claimant in the early part of May 2008, he attempted to address the issue but continued to be unclear as to Ms. Julius' intentions. Ms. Julius had attempted to inform the employer that she still planned to continue to move to a different geographic area but would not do so until a future uncertain date and desired to remain employed until giving official notice. The issue is further complicated by an e-mail that Ms. Julius sent to the employer on May 5, 2008 stating that she would be leaving the company. Ms. Julius had sent the e-mail in response to a previous issue with regard to vacation scheduling; however, the employer was confused by the message and believed that it was an open-ended resignation. The claimant was, therefore, informed on May 7, 2008 that that would

be her final working day. The claimant was paid through the remainder of that week and for two additional weeks as in notice.

REASONING AND CONCLUSIONS OF LAW:

The evidence in this matter establishes that the claimant did not voluntarily quit her employment on May 7, 2008 but that the claimant's separation was initiated by the employer. The question is whether the evidence in the record establishes that Ms. Julius' separation was for misconduct in connection with the employment. It does not.

The evidence in the record establishes that the employer acted reasonably upon its belief that the claimant had submitted a notice of resignation by setting the claimant's final day of employment, paying the claimant for the remainder of that week plus two weeks' additional severance pay. The employer's intention was to insure proper coverage at its local office based upon what the employer believed to be the claimant's open-ended resignation from employment. The evidence, however, establishes that Ms. Julius had not submitted a resignation from employment setting a final day of work. The claimant had, however, sent an e-mail to her employer on May 5, 2008 that was confusing in nature and did not address the basis for her communication, her concern about vacation scheduling. Based upon the claimant's previous statement to the company, the employer concluded that the e-mail was an open-ended resignation and acted to end the employment relationship so that a replacement could be hired.

The question before the administrative law judge is not whether the employer has a right to separate an employee for these reasons but whether the separation is disqualifying under the provisions of the Iowa Employment Security Act. While the decision to separate Ms. Julius may have been a sound decision from a management viewpoint, the fact establishes that the claimant had not at that time resigned and that there was no disqualifying conduct on the part of the claimant.

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.

For the reasons stated herein, the administrative law judge concludes that the claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated June 9, 2008, reference 01, is hereby affirmed. The claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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