

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VERNA J HAYES
Claimant

APPEAL NO. 07A-UI-02587-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**AMERICAN SIDING & WINDOW
SYSTEMS INC**
Employer

**OC: 03/13/07 R: 01
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Verna Hayes, filed an appeal from a decision dated March 12, 2007, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on March 29, 2006. The claimant participated on her own behalf. The employer, American Siding and Window Systems, Inc., did not provide a telephone number where a representative could be contacted and did not participate.

ISSUE:

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

FINDINGS OF FACT:

Verna Hayes was employed by American Siding and Window Systems, Inc., from February 22, 2002 until February 13, 2007, as part-time office staff. On February 13, 2007, she and several others were summoned to the office of Owner Mike Pagano to discuss sales. The owner stated the claimant should be helping with “resets” and she said she did when she had the time available from her regular duties. He emphasized he wanted the resets done and she said she took her direction from her immediate supervisor, Roy Mr. Pagano then became very agitated, raising his voice. Ms. Hayes stepped back away from him and looked at Roy. At that point the owner told her to get her “shit” and leave, and never come back.

REASONING AND CONCLUSIONS OF LAW:

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.

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 employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The employer has not presented any evidence that the claimant's discharge was due to any misconduct on her part and has not met its burden of proof. Disqualification may not be imposed.

DECISION:

The representative's decision of March 12, 2007, reference 01, is reversed. Verna Hayes is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css