

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

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Appeal Number: 06A-UI-07494-SWT
OC: 06/29/06 R: 02
Claimant: Respondent (2)

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 employer appealed an unemployment insurance decision dated July 18, 2006, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 10, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. David Williams participated in the hearing on behalf of the employer with witnesses Brad Waller, Rosalie Lumadue and Larry Matijevic. Exhibit 1 was admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked as a night custodian for the employer from February 21, 2000 to June 20, 2006. The claimant had been counseled regarding her abusive treatment of coworkers on more than one occasion. On June 1, 2006, the claimant had a conflict with a coworker, Rosalie Lumadue, regarding a light not being turned off. After Lumadue had called the claimant lazy for

not turning off the light, the claimant said Lumadue was "trash" and that the supervisors were giving the coworker "just enough rope to hang herself." Lumadue complained to management about the claimant's conduct. When the claimant was confronted about the incident by her supervisor, she denied making the comments to Lumadue. She was warned on June 7, 2006 that if there were other similar complaints about her by employees, she would be immediately terminated.

On June 15, 2006, the claimant decided that she would audio record her conversations with other employees. Lumadue noticed that the claimant was recording and asked the claimant if their supervisors knew that she was doing it. The claimant insisted that she told the supervisors and they knew she was recording conversations, which was untrue. Lumadue reported what had happened to the supervisor. When confronted about telling Lumadue that their supervisors knew she was recording, the claimant denied that statement.

On June 20, 2006, the employer discharged the claimant for dishonesty in claiming that the supervisors knew she was recording conversations and because of the repeated instances of harsh treatment of coworkers.

The claimant filed for and received a total of \$1,296.00 for the weeks between June 25 and June 29, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. Lumadue testified credibly about what happened on June 1 and 15, 2006, and her testimony is more believable than the claimant's testimony. It is improbable that Lumadue made up the comment about giving her enough rope to hang herself or being called trash.

The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. She was untruthful when she told Lumadue their supervisors knew she was recording conversations and when she denied saying it when confronted by her supervisor. She had just been warned that her job was in jeopardy due to similar conduct. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$1,296.00 in benefits for the weeks between June 25 and July 29, 2006.

DECISION:

The unemployment insurance decision dated July 18, 2006, reference 01, is reversed. The claimant was overpaid \$1,296.00 in unemployment insurance benefits, which must be repaid.

saw/cs