

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

DIANE FRASCCELLO
KERSHAW CT LOT 71
COLONA IL 61241

ADEL WHOLESALERS INC
PO BOX B
BETTENDORF IA 52722

Appeal Number: 04A-UI-00968-SWT
OC 12/28/03 R 12
Claimant: Appellant (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 claimant appealed an unemployment insurance decision dated January 22, 2003, reference 01, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on February 23, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Patricia Ruhl. Peter Colgan participated in the hearing on behalf of the employer with a witness, Judy Dugan.

FINDINGS OF FACT:

The claimant worked full time for the employer as a showroom sales manager from May 15, 2001 to December 19, 2003. Her supervisor was the general manager, Peter Corgan. Ralph Gibson is the owner of the business.

On November 18, 2003, the claimant was talking to a coworker about what she considered were stressful and intolerable working conditions and treatment by the employer. Her comments were overheard by Gibson. She was called into a meeting with Gibson and Corgan. Gibson informed her that her behavior was improper and unacceptable. Gibson said that if she was so unhappy, she should leave and he would give her a good recommendation.

After work that day, the claimant was upset by the conditions at work and troubled by the meeting with Gibson and Corgan. She stayed up late trying to compose a letter expressing her concerns and communicating that she would probably not be employed after the first of the year. She did not finish the letter. She called and left a voice mail for Corgan the next day. In the voice mail, she explained that she was going to be late for work because she had been up all night writing a letter explaining to him that she probably would not be employed after the beginning of the year. The claimant already had a vacation scheduled from December 20 to December 31, 2003.

Later, Corgan left a voice mail for the claimant telling her that he needed the letter. On December 1, 2003, Corgan called the claimant into his office. He said he wanted to confirm that December 19, 2003, was her last day of work. The claimant was overwhelmed and did not know what to say. Corgan told the claimant that they were making arrangements to fill her position. He again said he needed to confirm that December 19, 2003, would be her last day of work. The claimant understood by his comments that she was discharged and agreed. The claimant did not intend to quit employment until she found another job.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code Sections 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992). I concluded the claimant did not intend to quit until she found another job. She never submitted a written resignation and her voice mail did not set the date of her resignation and only said that she probably would not be employed after the first of the year, an indefinite reference. It was Corgan that insisted that December 19, 2003, be her last day, and when she did not respond quickly enough, he expressed that they were arranging for her replacement. The separation must be treated as a discharge.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case. The discharge was due to her expressing dissatisfaction with her job and a desire to leave employment in the future.

DECISION:

The unemployment insurance decision dated January 22, 2003, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/kjf