

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMIE J THOMPSON
Claimant

APPEAL NO. 08A-UI-04106-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOUSBY MACK INC
Employer

**OC: 04/16/08 R: 02
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Jamie J. Thompson (claimant) appealed a representative's April 16, 2008 decision (reference 01) that concluded she was not qualified to receive benefits, and the account of Housby Mack, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 12, 2008. The claimant participated in the hearing with her attorney, Louis Hockenber. (Liz Overton, Attorney at Law, observed the hearing.) Karin Zeigler, Attorney at Law, appeared on the employer's behalf. Kelly Housby and Sandy Petticord testified for the employer. Rod Wiese and Karen Holliday were available to testify. During the hearing Employer Exhibits One through Five were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 8, 2007. At the time of hire, the claimant received copies of the employer's handbook and a number of the employer's policies. (Employer Exhibits One through Four.) The employer initially hired the claimant as an administrative assistant. When this position did not work out, the employer transferred the claimant to work as a receptionist. Part of the claimant's job duties as a receptionist required her to clean the kitchenette during the day, answer the phone when the primary person could not answer a call, help make travel arrangements, direct customers to the correct sales person and work with other employees as a team member.

Before the claimant worked for the employer she worked as a sales person, but not as a receptionist. As a new employee, the claimant had many things to learn. Petticord, her supervisor, told employees at work to be patient with the claimant when they complained about the claimant. Petticord believed the claimant needed time to learn various functions of her job.

Prior to February 25, Petticord talked to the claimant about a travel error the claimant made. On February 25, Petticord talked to the claimant about another travel. February 25 was the first time Petticord gave the claimant a written warning and informed her there were problems with way she answered the phone. (Employer Exhibit Five.) The claimant did not agree with the reasons Petticord gave her for the February 25 written reprimand. (Employer Exhibit Five.)

The claimant worked until 5:00 p.m. on February 25. Normally, the claimant cleaned the kitchen area several times during her workday. The claimant does not recall what she did or did not do about the kitchen after Petticord talked to her on February 25. The claimant was not the last person to leave work on February 25, 2008. When Housby, the president, came to work the next day, there were dirty dishes left in the kitchen and the cabinet was dirty. Housby cleaned the kitchen area the morning of February 26. The employer assumed the claimant did not clean the kitchen area before she left on February 25.

The claimant called the employer to report she was unable work on February 26 because her daughter was ill. Petticord was looking for an invoice and talked to the claimant about the invoice. The claimant indicated the invoice was on the claimant's desk. After talking to Petticord, the claimant contacted a co-worker, Lisa, to see if she could find the missing invoice for Petticord. Later when Petticord talked to Lisa, she learned the claimant had contacted Lisa and believed the claimant told Lisa that her job was in jeopardy.

On February 26, the claimant saw an attorney because she believed the employer was discriminating against her because she was pregnant. The claimant went to work on February 27, left to go to a doctor's appointment, and returned to work upon completing her doctor's appointment. When the claimant returned from her doctor's appointment, the employer had received a request from her attorney for a copy of her personnel file. The employer told the claimant she could leave work for the rest of the day.

On February 28, Housby informed the employer's attorney that the claimant was discharged. The employer's attorney then contacted the claimant's attorney to relay the claimant's termination. The employer discharged the claimant because the employer had never been satisfied with her work performance, employees continued to complain about the claimant, and the employer did not see any signs that the claimant's work performance would improve to the point co-workers trusted her and wanted to work with her.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's

interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The employer established business reasons for discharging the claimant. The facts do not, however, reveal that the claimant intentionally failed to perform her work satisfactorily. The claimant had not previously worked as a receptionist. The claimant made some mistakes with the employer's travel, but the facts do not establish she intentionally made mistakes. Petticord learned before February 25 that the claimant was not happy with her job and was looking into the possibility of finding another job. Even after the claimant made this announcement, the facts do not establish she intentionally and substantially failed to do her job satisfactorily. Petticord acknowledged there was a learning curve and asked employees to be patient with the claimant. After Petticord moved her office so she could see and hear the claimant at work, she did not warn the claimant that her job was in jeopardy until February 25. The facts do not establish that the claimant conducted herself or performed her work in such a way that created dissension at work. Her co-workers complained about the claimant because they were not satisfied with her work performance.

After the claimant received the February 25 corrective action warning, she talked to an attorney about certain legal rights or avenues. The attorney added fuel to the fire by requesting a copy of the claimant's personnel file from the employer. Although the employer asserted the request for the personnel file had nothing to do with the claimant's discharge, the timing of the discharge in relation to receipt of the request is troubling.

The employer contended the claimant was discharged in part because she was insubordinate on February 26, 2008. The employer understood the claimant contacted a co-worker to report Petticord would be contacting her and that she, the co-worker, was in trouble. Since Lisa, the co-worker mentioned above did not testify at the hearing, the claimant's testimony as to what she told Lisa on February 26, 2008, must be given more weight than the employer's reliance on hearsay information. Therefore, a preponderance of the credible evidence establishes the claimant contacted Lisa so she could locate the invoice Petticord was looking for. The claimant did not make any derogatory remark about the employer to Lisa.

The employer also asserted the claimant was discharged in part because she did not clean the kitchen area on February 25. The facts establish the kitchen area was dirty when Housby came to work that morning. The facts do not establish if the kitchen was clean or dirty when the claimant left work on February 25. Other employees may have used the kitchen between the time the claimant left work on February 25 and when Housby reported to work on February 26.

After carefully reviewing all the evidence, the facts do not establish that the claimant intentionally disregarded the employer's interests or acted in such a way that disregarded the standard of behavior the employer had a right to expect from an employee. The claimant did not commit work-connected misconduct. As of March 2, 2008, the claimant is qualified to receive benefits.

The employer is not one of the claimant's base period employers during her current benefit year. Therefore, the employer's account will not be charged during the claimant's current benefit year.

DECISION:

The representative's April 16, 2008 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute a current act of work-connected misconduct. As of March 2, 2008, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css