

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSI R WEBER
Claimant

APPEAL NO: 07A-UI-01000-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DILLARD'S INC
Employer

OC: 12-03-06 R: 04
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct
Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 17, 2007, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on February 14, 2007. Claimant participated with Amy Phopheter, former sales associate. Employer participated through Tammy Dill, store manager and John Hancock, area sales manager.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a part time sales associate from May 2, 2005 until December 1, 2006 when she was discharged. Sales associate Jacqueline Young, who is of African American ethnicity, reported on November 28 that claimant told her while on the sales floor, "Have a good day Jacqueline Negro." During the investigatory meeting on the same day with claimant, Young, Dill and Hancock, claimant did not deny the comment and insisted that Young be moved to a different department as she would not continue to work with her. Young mentioned filing a civil rights complaint and claimant said to her, "That's what you do, that's how you get your money, you sue people."

In November 2006 claimant asked, while on the sales floor, "who that black girl was" about one individual in a group of area sales managers. Another sales associate overheard the question and took offense. Claimant had also complained "at least ten times" to management about her perception that Young was not subject to the same work rules as she was and tendered her resignation to be effective December 1, 2006 because of that. She then rescinded her resignation about November 26, 2006.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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).

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25(6), (21) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer

has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(6) The claimant left as a result of an inability to work with other employees.

(21) The claimant left because of dissatisfaction with the work environment.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). While claimant's rescission of her resignation was apparently accepted by employer, her reasons for initially deciding to leave were without good cause attributable to the employer and would be disqualifying.

However, claimant was discharged because of her public inappropriate comments to and about coworkers based upon their race or ethnicity. Employer has a legitimate business interest and legal obligation to protect all employees from harassment, whether based upon sex, race, religion or any other protected class. Although employer did not take serious disciplinary action against claimant in November or require additional training about appropriate work behavior, her established pattern of such conduct indicates deliberate harassment of Young and, as such, is misconduct. Benefits are denied.

DECISION:

The January 17, 2007, reference 01 decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs