

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARY MELCHERT**  
Claimant

**APPEAL NO. 14A-UI-05785-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REMBRANDT ENTERPRISES INC**  
Employer

**OC: 05/04/14**  
**Claimant: Appellant (1)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Mary Melchert filed a timely appeal from the May 28, 2014, reference 01, decision that disqualified her for benefits. After due notice was issued, a hearing was held on June 26, 2014. Ms. Melchert participated. Darla Thompson represented the employer and presented additional testimony through Mayra Rosales.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment, which disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Mary Melchert was employed by Rembrandt Enterprises, Inc. as a full-time Layer Assistant Manager until May 9, 2014, when the employer discharged her from the employment for engaging in an inappropriate discussion with subordinates on May 2, 2014. On May 2, 2014 Ms. Melchert discussed with two female subordinates the fact that she was not wearing underwear. Ms. Melchert then engaged in a discussion with the two subordinates about having one or both of them communicate her lack of underwear to a male coworker. Both subordinates declined to convey the message. Later during the shift, one of the employees greeted Ms. Melchert by calling her “captain commando.” This led to another discussion wherein Ms. Melchert indicated, in front of additional staff, that she was not wearing underwear. One of the female subordinates who had been involved in the initial discussion on May 2 reported the matter to a supervisor on May 7, 2014.

The employer had written work rules that prohibited inappropriate or offensive utterances in the workplace. Ms. Melchert was aware of the work rules and was charged with enforcing them amongst her subordinates.

## REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv., 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

An employer has the right to expect decency and civility from its employees. Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995).

Ms. Melchert was a supervisor in the workplace and was responsible not only for following the rules of the workplace, but also enforcing them amongst subordinates. Ms. Melchert engaged in an inappropriate discussion with two subordinates about her lack of appropriate undergarments. Ms. Melchert added a sexual aspect to the discussion, and further inappropriateness to the discussion, by asking both subordinates to report her lack of undergarments to a male coworker. Ms. Melchert's decision to discuss her lack of garments led

to the later discussion, wherein Ms. Melchert involved additional staff in an inappropriate discussion about her lack of undergarments. Ms. Melchert's decision to engage in inappropriate, sexualized conversation in the workplace, undermined her supervisory authority in the workplace, disrupted the workplace, and was in willful and wanton disregard of the employer's interests in maintaining an orderly, civilized workplace.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Melchert was discharged for misconduct. Accordingly, Ms. Melchert is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits.

**DECISION:**

The claims deputy's May 28, 2014, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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