

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CASSIE L GILMORE
Claimant

APPEAL NO. 14A-UI-08203-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ECHOSPHERE LLC
ECHOSTAR STAELLITE**
Employer

**OC: 07/06/14
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Cassie Gilmore (claimant) appealed a representative's July 29, 2014 (reference 01) decision that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Echosphere (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 28, 2014. The claimant participated personally. The employer participated by Rocky Tash, General Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 26, 2010 as a part-time inventory specialist. The claimant normally went to work and put empty pallets outside to clean up the work area. Prior to November 2013 the claimant's husband was allowed to take some of the pallets. In November 2013 the employer told the claimant and her husband not to take the pallets. The employer found another individual who wanted all the pallets. The new individual who took the pallets collected them from outside where the claimant put them.

On June 12, 2014 the claimant arrived at work with other individuals. She moved all the pallets outside to clear the workspace. The claimant was unaware that her husband was going to stop and pick up pallets. The employer suspended the claimant from working on June 12, 2014 and questioned her on June 17, 2014. On July 11, 2014 the employer terminated the claimant because her husband took pallets.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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.

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 establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The claimant performed her job on June 12, 2014, as she did on any other day. The only difference on that day was the claimant's husband's behavior. The employer terminated the claimant for her husband's behavior. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's July 29, 2014 (reference 01) decision is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

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