

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

DANIELLE L LUMADUE  
3945 – 4<sup>TH</sup> ST  
DES MOINES IA 50313

IMAGE INC  
MOLLY MAIDS  
121 SW 3<sup>RD</sup>  
ANKENY IA 50021

Appeal Number: 05A-UI-11257-DWT  
OC: 10/02/05 R: 02  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Danielle L. Lumadue (claimant) appealed a representative's October 21, 2005 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Molly Maids (employer) would not be charged because the employer discharged the claimant for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 16, 2005. The claimant participated in the hearing. Tammy Huinker, the owner, and Lisa Sausch, the office manager, appeared on the employer's behalf. 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 April 28, 2005. The claimant worked as a full-time cleaning associate.

On October 6, 2005, the claimant notified the employer that she was unable to work as scheduled that day, but would be at work the next day. The claimant was very upset and angry on October 6 because for a second time her car had been broken into at her residence. In addition to a broken window, the claimant also had a CD player stolen. The claimant called the police but only gave her a case number for insurance purposes.

When the employer talked to the claimant, the employer understood the claimant was angry and upset about what had happened to her. The employer would not excuse the claimant's absence and told her she had to report to work. This resulted in the claimant becoming more upset. The claimant raised her voice after the employer told her she had to come to work that day. The employer did not appreciate the claimant's language or that she had raised her voice. As a result, the employer told the claimant there was no need for her to report to work again. The claimant planned to work as scheduled the next day.

#### 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).

The facts establish that prior to October 6, the claimant did not have an attendance problem or a problem with the way she talked to the employer. On October 6 the claimant was extremely upset because someone had again broken into her vehicle. The claimant called the employer because she was so angry she did not believe she could perform her job satisfactorily. The claimant took the proper steps in notifying the employer that she was unable to work as scheduled this day. The employer would not excuse the claimant's absence and insisted the claimant report to work. While it is understandable that the employer wanted the claimant to work so all work would get done in a timely manner, the employer's insistence that the claimant

report to work immediately and take care of her personal problems later, amounts to a lack of understanding on the employer's behalf. Additionally, it further aggravated the claimant and resulted in her becoming more upset.

The employer discharged the claimant for engaging in an isolated hotheaded incident on October 6, 2005. The claimant's conduct is not condoned, but the employer knew she was already upset and angry before insisting she work as scheduled on October 6, 2005. When the claimant raised her voice and made inappropriate comments, she had no control over her emotions. Under the facts of this case, the employer established compelling business reasons for discharging the claimant. The evidence does not establish that the claimant intentionally and substantially disregarded the employer's interests when she "blew up" at the employer on October 6, 2005. The claimant did not commit work-connected misconduct. As of October 2, 2005, the claimant is qualified to receive unemployment insurance benefits.

The employer is not a base period employer. During the claimant's current benefit year, the employer's account will not be charged.

#### DECISION:

The representative's October 21, 2005 decision (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of October 2, 2005, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account will not be charged during the claimant's current benefit year.

dlw/tjc