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

VICTORIA L JENSEN
1601 ARMY POST RD #24
DES MOINES IA 50315

DES STAFFING SERVICES INC
3326 INDIANOLA AVE
DES MOINES IA 50315

Appeal Number: 04A-UI-01162-DWT
OC 01/04/04 R 02
Claimant: Respondent (1)

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, 4th 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 are 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.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

DES Staffing Services, Inc. (employer) appealed a representative's February 3, 2004 decision (reference 01) that concluded Victoria L. Jensen (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant's separation was for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 25, 2004. The claimant participated in the hearing with her witness, Joe Palmer. Brad Russell, the director of operations for Iowa, 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 claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on December 8, 2003. The employer is a temporary staffing agency. The employer assigned the claimant to work for a janitorial service, Cleaning Connection.

On Monday, December 29, the claimant borrowed Palmer's car because her car was not working. On the way to work, the claimant hit a deer with Palmer's car. The claimant was upset but called Palmer. The claimant's immediate supervisor, Deb, called the employer and talked to Russell between 5:00 p.m. and 6:00 p.m. when the claimant had not reported to work at 5:00 p.m. Russell left a message on the claimant's answering machine that Cleaning Connection needed the keys she had.

When Palmer arrived at the scene of the accident around 7:00 p.m., the claimant called Deb. Since the claimant had the keys to all the buildings that needed to be cleaned that night, her supervisor was upset. The claimant told Deb where she would be if she wanted to pick up the keys.

By Tuesday morning, December 30, the claimant received information from Cleaning Connection that before she would get her last paycheck from them she had to give the employer her keys and all equipment that had been issued to her. Palmer brought the keys and a vacuum cleaner to the employer's office on December 30 and gave it to the receptionist.

The claimant did not ask for another assignment right away because she did not have any transportation. When the claimant established a claim for unemployment insurance benefits during the week of January 4, 2004, her car was working and she was able to get to work. The claimant contacted the employer on January 7, 2004 about another job assignment. She then learned the employer would not assign her to another job because of the December 29, 2003 incident.

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).

As the result of the December 29 accident that occurred on the way to work with a friend's car, the claimant was unable to report to work and did not think to contact her immediate supervisor right away. The claimant's failure to contact her immediate supervisor before 7:00 p.m. and to take the building keys to her supervisor shows poor judgment. Since the claimant had just been involved in an accident, her actions are understandable. The facts do not establish that the claimant intentionally disregarded the employer's or Cleaning Connection's interests on December 29, 2003.

The employer established compelling business reasons for terminating the claimant's assignment and deciding the claimant would not again be assigned to another job. Based on the evidence presented during the hearing, the reasons for the claimant's termination do not, however, constitute work-connected misconduct.

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

DECISION:

The representative's February 3, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of January 4, 2004, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account will not charged during the claimant's current benefit year.

dlw/b