

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

LISA M KOTZ  
541 CLINTON AVE  
EAST DUBUQUE IL 61025

L A LEASING INC  
SEDONA STAFFING  
612 VALLEY DR  
MOLINE IL 61265

Appeal Number: 05A-UI-03900-SWT  
OC: 03/20/05 R: 12  
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, 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:

The employer appealed an unemployment insurance decision dated April 7, 2005, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on May 2, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Colleen McGuinty participated in the hearing on behalf of the employer with a witness, Nikki Kieffer.

FINDINGS OF FACT:

The claimant worked full time for the employer as an account manager from June 28, 2004, to March 17, 2005. The claimant received a written warning on February 25, 2005, for unsatisfactory conduct toward clients and employees.

On March 7, 2005, the claimant needed to obtain some information regarding a worker's hours to correct his pay. Instead of contacting the employee directly she called the supervisor at the location where the employee was working to have him get the information from the employee. The claimant also had arranged for an employee to work a shift for a client business. The employee called the claimant to state he was going to be late for work. The claimant called and left a message for the supervisor, but the supervisor did not get the message and became upset when the employee did not report to work on time. He complained to the employer that the claimant had not notified him about the late employee. The employer also received a complaint about the same time from a business who claimed that the claimant had not put enough effort into filling a job order that they had placed with the employer. The claimant had made an effort to fill the job but it was not sufficient to satisfy the client business. As a result of the conduct listed above, the employer discharged the claimant on March 17, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

Iowa Code section 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).

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 substantial and 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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case. No willful and substantial misconduct has been proven in this case.

#### DECISION:

The unemployment insurance decision dated April 7, 2005, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/pjs