IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

PAMELA S BROWN
Claimant

PER MAR SECURITY & RESEARCH CORP
Employer

APPEAL NO. 06A-UI-09452-SWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/20/06 R: 03
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated September 15, 2006, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on October 12, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Mike Cline participated in the hearing on behalf of the employer with a witness, Bard Bigelow. Exhibits 1 through 25 were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a security officer from May 24, 2005, to August 24, 2006. She was promoted to the position of lead officer in October 2005. The employer discharged her on August 24, 2006, for failing to perform her job as directed as described below.

The final and primary reason for the claimant's termination was her failure to wear a new blazer she had picked up in May 2006, which was to replace her old blazer. She and other employees were informed by a supervisor that the jacket was to be worn by May 14. The blazer, however, was not the correct size and the sleeves had to be altered. The claimant was permitted to wear her old blazer until she got the sleeves altered. The employer had arranged for a particular seamstress in Cedar Rapids to do alterations on the uniforms.

On June 21, 2006, a supervisor conducted a uniform inspection and marked it "unacceptable" because she wearing the old blazer and white socks. She told the supervisor she would call to arrange a time with the seamstress. The claimant called the seamstress who works out of her home but got no answer. On July 11, 2006, another supervisor conducted an inspection and marked it "unacceptable" because she wearing the old blazer. The claimant had heard from another employee that the seamstress was on vacation so she did not call her at that time. The claimant lives in Mechanicsville about 25 miles from Cedar Rapids, which is where she worked

and the seamstress lived. She was working from 3:30 p.m. to midnight. She had a nine-year-old daughter at home during the day. On August 14, 2006, a supervisor conducted an inspection and marked it all "acceptable" but noted that she still had an older-style blazer.

On August 15, 2006, the claimant's supervisor, Mike Cline, sent the claimant an email noting several job deficiencies. Cline stated he was somewhat concerned about her new blazer. He noted that she had been untimely in responding to past emails, had not successfully passed a lesson on a company test, and had not completed some reports promptly. Cline stated that her position as a lead person was in question and that she would have until August 18, 2006, to evaluate her position and send a response justifying why she should remain in her position.

The claimant responded to the email by August 18. After getting the email, she called the seamstress and had made an appointment to bring the blazer in on August 21, which was the day her daughter started back to school. She explained to Cline in her response about the problems getting the blazer in over the summer months and that she now had an appointment to get the alteration done. At the time the claimant was terminated, the blazer had been dropped off to be altered.

The other reasons for the claimant's discharge included: (1) sending a joke Christmas email December 25, (2) not immediately reporting an employee who had drank some beer at the end of his shift on March 17, (3) not reporting to supervisors an allegation made by a female employee that a male employee had made comments that made her uncomfortable on April 20, (4) complaints that she had made unnecessary inquiries of the cleaning staff at her work location on June 9, (5) being two days late in responding to a request for training suggestions due on June 23, (6) sending an email on July 17 complaining that she was not able to complete a required training by the deadline of August 4 (she in fact did the training on August 4), (7) not responding immediately to Cline's email sent to her on July 21 asking her questions about a report she had made about a security concern, and (8) getting an unsatisfactory score on one lesson of the training class she took on August 4. Although the claimant was counseled about most of these incidents, no formal discipline was issued and the claimant was unaware that her job was in jeopardy until the email sent to her on August 15, 2006.

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:
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> 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.
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> (1) Definition.
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> 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).

871 IAC 24.32(8) provides:

> (8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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. No current act of willful or substantial misconduct has been proven in this case. The current act of alleged misconduct, which the employer identified as the primary reason for her discharge, was the failure to wear the new uniform blazer. After she picked up the blazer, she was allowed to wear the old blazer until the new one was altered. No new deadline was set for her to accomplish the task and the claimant was not informed that it was a critical problem until August 15. She then made the arrangement to have the tailoring done during her off-duty time. I believe her testimony that she made some effort to arrange for the alteration during her off-duty times. Although I think she could have unquestionably done more than she did, her conduct was unsatisfactory rather than being willfully insubordinate. The remaining conduct would not be disqualifying as it would not be considered current conduct.

DECISION:

The unemployment insurance decision dated September 15, 2006, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs