

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

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Appeal Number: 05A-UI-12260-BT  
OC: 10/30/05 R: 03  
Claimant: Appellant (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 for Misconduct

STATEMENT OF THE CASE:

Denise Kuennen-Murphy (claimant) appealed an unemployment insurance decision dated December 1, 2005, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Flooring Gallery (employer) for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 21, 2005. The claimant participated in the hearing with Attorney Chet Mellema. The employer participated through Teri Stalzer, Human Resources, and Attorney Michael Reck. Employer's Exhibit One was admitted into evidence.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time commercial builder sales person from October 4, 1996 through October 28, 2005. She was discharged after receiving three disciplinary warnings for violating the employer's Respect Program, a standard of conduct policy. Employees are discharged if that employee receives three violations of the same policy. The claimant signed an acknowledgement form on February 27, 2002, which indicated she read and understood the policy and that she agreed to abide by that policy. The first written warning was issued only five months later on July 30, 2002, after a co-employee reported that the claimant was making fun of his medical disability. The co-employee advised the employer a lawsuit would be filed if the matter was not handled appropriately. A copy of the Respect Program was attached to the disciplinary notice.

The claimant violated the Respect Program a second time and another written warning was issued on March 22, 2004. This incident involved the claimant's conduct towards a store manager and two salespersons. The store manager reported that the claimant was insubordinate, disrespectful, and called him names. The matter was serious enough that a district manager became involved and the warning advised the claimant that further violations could result in her termination.

The employer became aware of the claimant's third violation of the Respect Program when it received an October 20, 2005, letter from an attorney threatening a lawsuit as a result of the claimant's conduct. The letter was dated October 20, 2005 and it advised the employer that the claimant had made defamatory remarks about its client, Richard Wyant, who was a former installer and a current competitor of the employer. The letter reported the claimant made comments to two different individuals stating Mr. Wyant is not competent or able. She further stated that Mr. Wyant was a deadbeat and owed thousands of dollars. The attorney for Mr. Wyant demanded the claimant retract the comments. The employer investigated the matter and the claimant admitted making comments but vacillated on exactly what she said. The employer contacted Jeff Fishes and Pete Schaelehl, who both confirmed the claimant had made the negative comments about Mr. Wyant. On October 27, 2005, the claimant issued a written and signed retraction of the statements she made concerning Mr. Wyant. She was discharged on the following day.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a.

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 claimant was discharged after it was determined she violated the employer's code of conduct policy three times. Her behavior was repeatedly resulting in potential legal liability for the employer even after she had been warned about her inappropriate conduct and comments. The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

#### DECISION:

The unemployment insurance decision dated December 1, 2005, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

sdb/kjw