

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ABBY M NURRE
Claimant

APPEAL NO. 10A-UI-02516-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FORT DODGE - ST EDMONDS
Employer

**Original Claim: 01/03/10
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 17, 2010, reference 05, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on March 3, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Erin Lyons, attorney at law. Paul Janke participated in the hearing on behalf of the employer with a witness, Tim Hancock. Exhibits One and A were admitted into evidence at the hearing. In an unusual turn of events, the Agency decided on January 27 that the claimant was qualified to receive benefits based on her separation from the employer (which the employer appealed) but disqualified her based on the same separation on February 17 (which the claimant appealed). The decision on February 17 should not have been issued; but, to finally resolve all appeals, I will issue decisions regarding each appeal.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a high school math teacher from August 1, 2009, to December 22, 2009. She was informed and understood that teachers were required to conduct themselves as moral persons in compliance with the moral standards of the Catholic Church in their personal and professional lives and were prohibited from publically advocating principles contrary to the teachings of the church.

The claimant had a Facebook page that required acceptance of an invitation to be a friend to access profile information. In her profile, she completed a list of 100 "Truths" questions. She replied "No" to the question "Do you believe in God." She did not invite any students as Facebook friends and did not post her responses at work.

The claimant had registered on a website called "Atheist Nexus" to view the information on the site and post comments. On November 16, 2009, she posted a comment about some interesting information she had found in a New York Times' article reporting "the government had spent more than \$2.3 million on prayer research since 2000." The claimant did not have to represent that she was an atheist to register on the site and did not advocate anything in her comment. She did not register or post her comment at work.

In December 2009, some students found out about the comment the claimant had posted on the Atheist Nexus website and the Facebook list. As a result, the high school principal and the president of the school system discovered the website information on December 22. On December 26, 2009, she was discharged for registering on the website and posting the comment and the Facebook list, which were considered violation of the employer's policies.

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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. The claimant's registration on the atheist website and the posting of the prayer-funding comment and the 100 Truths' comment did not involve publically advocating principles contrary to the teachings of the church and did not involve immoral conduct by the claimant.

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

DECISION:

The unemployment insurance decision dated February 17, 2010, reference 05, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw