

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHERINE C POTHAST
Claimant

APPEAL NO. 07A-UI-00331-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALGREEN CO
Employer

**OC: 12/10/06 R: 02
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Katherine C. Pothast (claimant) appealed a representative's January 8, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Walgreen Company (employer) would not be charged because the claimant had been discharged for disqualifying reasons. Hearing notices mailed to the parties' last-known addresses of record on January 10, 2007, informed the parties a telephone hearing was scheduled on January 25, 2007.

The employer's representative, TALX, faxed a postponement request to the Appeals Section on January 23, 2007, at 4:09 p.m. The morning of January 24, the administrative law judge left a message for the employer's representative and denied the postponement request. The request was denied because the request had not been made in a timely manner. The representative was asked to contact the administrative law judge if there were any questions or any further information the employer wanted to provide concerning the postponement request. The representative did not contact the administrative law judge.

The employer did not provide the Appeals Section with the names or phone numbers of any potential witnesses. As a result, no one participated in the hearing 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 employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on December 7, 1977. The claimant worked as the head beauty advisor. Managers of the store supervised her. Prior to December 15, 2006, the claimant had not received any warnings about problems with any aspect of her job. The claimant had no idea her job was in jeopardy.

About a week before her employment separation, the claimant's friend wanted a product, a body massager, demonstrated. The claimant demonstrated the body massager on her friend's cheek, arm, and thigh. No one said anything to the claimant about demonstrating the body massager at the time.

About a month earlier, the claimant accidentally brushed a female assistant manager's breast. No one said anything to the claimant about this incident at the time this occurred.

On December 15, 2006, the employer talked to the claimant about the above two incidents. The claimant told the employer about her friend wanting a body massager demonstration, but denied she had brushed or pinched an assistant manager's breast. The employer informed the claimant she was discharged on December 15 for violating the employer's sexual harassment policy. The claimant's friend, who wanted the body massager demonstrated, contacted the employer to explain she had requested the demonstration.

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).

The employer may have had business reasons for discharging the claimant. The facts do not establish that the claimant sexually harassed another employee or that she intentionally violated any of the employer's policies. The facts do not establish that the claimant committed work-connected misconduct. As of December 10, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's January 8, 2007 decision (reference 01) is reversed. The employer discharged the claimant for business reasons, but the facts do not establish the claimant committed work-connected misconduct. As of December 10, 2006, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employers' account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw