

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

ANDREA SPOOR  
1696 MAPLE DR  
WILLIAMSBURG IA 52361

NCS PEARSON INC  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-03788-CT  
OC: 07/27/03 R: 03  
Claimant: Appellant (2)

**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:

Andrea Spoor filed an appeal from a representative's decision dated March 23, 2004, reference 04, which denied benefits based on her separation from NCS Pearson, Inc. (Pearson). After due notice was issued, a hearing was held by telephone on April 26, 2004. Ms. Spoor participated personally. The employer did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Spoor was employed by Pearson from December 15, 2003 until February 23, 2004 as a full-time production clerk. On February 23, her manager

observed her talking to a coworker and directed her to come to the office. The conversation Ms. Spoor was having with the coworker concerned the fact that Ms. Spoor's finger had been cut and there was blood on the materials she was working with. She attempted to explain this to the manager when she was called to the office.

The manager appeared to be angry and upset with Ms. Spoor. He asked if she had had the green paper read to her and went to get a copy. When he returned, he told Ms. Spoor to sit down. She refused because she was afraid due to the manager's apparent anger. When he told her to sit down a second time, she asked if she could just stand. At that point, she was discharged. Ms. Spoor had not been disciplined for any matters prior to February 23.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Spoor was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Spoor was discharged when she refused to sit down as directed by her manager. Her refusal was based on the fact that she was afraid of her manager because he was angry and upset with her. Although she may have used poor judgment, her refusal did not evince a wanton or willful disregard of the employer's interests or standards. Her conduct did not constitute substantial misconduct as is required for a disqualification from benefits. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

After considering all of the evidence, the administrative law judge concludes that the employer has failed to satisfy its burden of proof in this matter. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons cited herein, benefits are allowed.

#### DECISION:

The representative's decision dated March 23, 2004, reference 04, is hereby reversed. Ms. Spoor was discharged by Pearson but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/b