

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VANESSA WRIGHT
Claimant

APPEAL NO. 06A-UI-11584-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

DILLARD DEPARTMENT STORES INC
Employer

OC: 10-22-06 R: 02
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 15, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 18, 2006. The claimant participated in the hearing. Doree Henderson, Assistant Store Manager; Michelle Kerley, Manager; and Stacy Spencer, Sales Associate, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last-known address of record on November 15, 2006. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by November 25, 2006. That date fell on a Saturday so the appeal was due November 27, 2006. The appeal was not filed until December 4, 2006, which is after the date noticed on the disqualification decision because the claimant received incorrect information from the Department with regard to her appeal. Therefore, the administrative law judge concludes the claimant's appeal is timely.

The claimant was employed as a full-time sales associate for Dillard Department Stores from May 23, 2006 to September 2, 2006. On September 1, 2006, the claimant had an altercation with another sales associate and a manager on the sales floor. The claimant was trying to purchase merchandise using her reward points on her Dillard's credit card but the employer's policy states that the reward points cannot be used as a cash payment but would show up as a credit on the next bill. The claimant became frustrated and agitated and said, "That's fucking stupid" and said the associate was an idiot and moron and gave the associate a \$7.00 payment and then gave her a \$20.00 payment so the associate assumed she wanted to pay the entire \$12.35 balance. When the claimant realized the receipt indicated the \$12.35 payment was made she became more upset and called the associate an idiot. She then said, "Thank you,

you fucking idiot,” and the associate asked if she was talking to her and the claimant said yes. Michelle Kerley, Manager, heard the conversation and reminded the claimant she had to go to security to get her package searched and sealed and the claimant initially refused before eventually agreeing to do so after yelling at the manager from the escalator. On September 2, 2006, Doree Henderson, Assistant Store Manager, called the claimant into the office and questioned her about the situation. The claimant denied using profanity but admitted calling the associate a stupid idiot, saying she did so in a “playful manner.” Ms. Henderson said she had three witnesses who heard her use the “f-word” on the floor and terminated her employment. The claimant testified she did not use profanity and was talking to herself about the people on the phone trying to help with the reward card program when she made the derogatory comments.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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).

While the claimant denies using profanity or directing derogatory comments toward the associate or manager, the employer had at least two witnesses to her actions and behavior September 1, 2006, and their testimony was more credible than the claimant's testimony that she did not use profanity and was simply talking to herself. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The November 15, 2006, reference 01, decision is affirmed. The claimant's appeal is timely. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css