

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANYELL S WIEDENHUFF
Claimant

APPEAL NO. 07A-UI-04850-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE GATES CORPORATION
Employer

**OC: 04/15/07 R: 02
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, The Gates Corporation (Gates), filed an appeal from a decision dated May 4, 2007, reference 01. The decision allowed benefits to the claimant, Danyell Wiedenbuff. After due notice was issued, a hearing was held by telephone conference call on May 30, 2007. The claimant participated on her own behalf. The employer participated by Human Resources Manager Connie Sorenson and Production Manager David Larimore. Exhibits One, Two, and Three were admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Danyell Wiedenbuff was employed by Gates from February 20 until April 19, 2007, as a full-time temporary production assistant. On April 18, 2007, Production Manager David Larimore received a call from an employee, Lori Gingery, who told him that another employee, Jackie, had called her the night before to warn her threats had been made against her by Ms. Wiedenbuff. Mr. Larimore interviewed two other employees, Jackie and Jill, who stated they heard the claimant make statements such as she was going to “kill Lori and if I’m not at work tomorrow it’s because I’ll be in jail.”

The matter was then referred to Human Resources Manager Connie Sorenson who re-interviewed those two witnesses plus a third, Heather. The claimant was interviewed by Mr. Larimore and she acknowledged she had been frustrated and angry because she felt the other employees had been “snotty” and “overly assertive” when dealing with her, but denied making any threats.

The employer considered the statements of all the individuals interviewed and concluded the claimant should be discharged for violating the workplace policy against harassment and threats to other employees.

REASONING AND CONCLUSIONS OF LAW:

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.

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). In the present case the employer did not present any firsthand, eyewitness testimony about any of the alleged threats made by the claimant. It did not even provide any written statements from these witnesses. The entire case was based on several levels of hearsay. Although hearsay is admissible, it is noted the witnesses were still employed by Gates but did not testify and hearsay will customarily have less evidentiary weight than first hand testimony.

If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which she was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

The testimony of the employer and claimant was inconsistent. The administrative law judge finds the claimant's testimony to be more credible because she was the only eyewitness to testify.

DECISION:

The representative's decision of May 4, 2007, reference 01, is affirmed. Danyell Wiedenhuuff is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw