

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PATRICIA A DAVIS**  
Claimant

**APPEAL NO. 10A-UI-03771-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CDS GLOBAL INC**  
Employer

**OC: 02/07/10**  
**Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

CDS Global, Inc. (CDS) filed an appeal from a representative's decision dated March 2, 2010, reference 01, which held that no disqualification would be imposed regarding Patricia Davis' separation from employment. After due notice was issued, a hearing was held by telephone on May 12, 2010. Ms. Davis participated personally. The employer participated by John Noll, Employee Relations Manager, and Teresa Brackett, Operations Manager.

**ISSUE:**

At issue in this matter is whether Ms. Davis was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Davis was employed by CDS from October 27, 2008 until February 9, 2010. She worked full time as an image support operator. She was discharged after making an offensive comment to a coworker on February 5, 2010.

On February 5, two employees, Nevzeta and April, who is African-American, were having a conversation when Ms. Davis approached them. Nevzeta was making reference to herself as the "queen." Ms. Davis did not know what the conversation was about but indicated that she would be the "queen" and Nevzeta could be the "princess." When April asked what she would be, Ms. Davis replied that she could be the "slave girl" and then left. Because she sensed that April may have found the reference offensive, Ms. Davis returned shortly and apologized to her. She later apologized to her a second time. Ms. Davis did not have a history of animosity or bad relations with April or any other coworker of color. The above matter was the sole reason for the separation.

**REASONING AND CONCLUSIONS OF LAW:**

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had

the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Davis was discharged because she made an offensive remark to a coworker. She does not dispute that she made reference to April as the “slave girl.” There is no doubt that April found the reference offensive. However, the administrative law judge is not persuaded that the comment was motivated by racial animus.

Ms. Davis’ comment demonstrated a lack of sensitivity. It did not evince a willful or wanton disregard of the employer’s standards of interest. She did not have any history of making inappropriate racial comments or not getting along with people of different races. Based on the evidence of record, the administrative law judge concludes that her comment represented nothing more than an isolated instance of poor judgment. Conduct so characterized is not considered disqualifying misconduct. See 871 IAC 24.32(1). While the employer may have had good cause to discharge Ms. Davis, conduct that might warrant a discharge will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983).

**DECISION:**

The representative’s decision dated March 2, 2010, reference 01, is hereby affirmed. Ms. Davis was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs