

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICIA A THOMPSON

Claimant

APPEAL NO. 10A-UI-07140-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

AFFORDABLE HEATING & COOLING INC

Employer

OC: 04/18/10

Claimant: Appellant (1)

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated May 7, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 13, 2010. The claimant responded to the hearing notice and provided a telephone number at which she could be reached. When she was called, she informed the administrative law judge that she could not participate in the hearing because she was about to go into work. The hearing had been previously postponed for the same reason. The claimant informed the administrative law judge that her information had been submitted and that she had to go to work. The claimant did not testify in the hearing. The employer participated by Bryan Thuma, owner. Patrick Kaplan, Erin McMann; Gary Schlotterbeck; Ken Midyett; and Pam Engelbart were witnesses for the employer. The record consists of the testimony of all of these individuals, including Mr. Thuma.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer installs and repairs heating and cooling equipment. Its office is located in Anamosa, Iowa. The claimant was hired on February 2, 2009, as a receptionist/clerk. Her main duty was to answer the phones and she also had responsibility for scheduling repairs and installations and other paperwork associated with the business. She was terminated on April 15, 2010, for disrespectful treatment of co-workers, vendors and customers that had occurred over the time she had worked for the employer.

The incident that led to the claimant's termination occurred on April 13, 2010. Another clerk in the office, Pam Englebart, asked a new employee to check invoices for payment of sales tax. There was a concern that the employer had been paying double sales tax, which meant that there were overpayments. A spot check of some invoices had shown some errors. For some

reason, the claimant got very angry about this and over a period of approximately 1 ½ hours verbally confronted Ms. Englebart and Ms. McMann, saying things like “this is a waste of time.” No profanity was used, but the claimant’s voice was raised and despite being told by Ms. Mann, the office manager that the job should be done, persisted in her insistence that this job did not need to be done and that Ms. Englebart did not know what she was doing.

The claimant had been previously warned about her inappropriate interactions with co-employees. On November 23, 2009, the claimant was given a written warning after she told another co-employee “not to mess with her stuff.” The claimant’s tone of voice was disrespectful and Ms. Englebart felt she had been degraded when she had simply been trying to help a sales representative while the claimant was one the phone. The claimant was also unhappy about having been given a written warning. She was told at that time that she cannot be disrespectful to other employees and that she must do her job as she was instructed.

The claimant was also given a verbal consultation in October 2009 about being abrupt with service technicians over the phone and criticizing them if they were not on schedule. One of the service technicians, Ken Midyett, decided in March 2010, that he could no longer work with the claimant and submitted his resignation. He later asked to return to his job after the claimant was terminated on April 15, 2010.

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. An employer can reasonably expect that an employee will treat co-employees and the employer's customers and vendors with courtesy and respect. In Henecke v. IDJS, 533 N.W.2d 573 (Iowa App. 1995), the Iowa Court of Appeals stated that an employer has the right to expect decency and civility from its workers. The employer has the burden of proof to show misconduct.

After carefully considering all of the evidence in this case, the administrative law judge concludes that the employer has shown misconduct. The testimony from the employer's witnesses, who were co-workers of the claimant, showed that the claimant had a persistent pattern of rude and disrespectful behavior. She would question the ability of her co-workers to do a job and the instructions of her supervisor in the office. She was abrupt with service technicians, to the point that one of those technicians decided to quit his job due to his inability to work with the claimant. The claimant was counseled on two occasions prior to her termination about the necessity of treating co-workers with respect. The claimant knew that her employer was concerned about her interactions with co-employees and the picture that her actions might portray to customers and vendors. Despite this knowledge, the claimant's behavior persisted. The administrative law judge concludes that the claimant's actions were a deliberate violation of her employer's policies and a breach of the employer's interest in maintaining a conducive work atmosphere. Benefits are denied.

DECISION:

The decision of the representative dated May 7, 2010, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs