

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

EMINA HRKIC
2147 NW 86TH #29
CLIVE IA 50325

IMAGE INC
MOLLY MAIDS
121 SW 3RD
ANKENY IA 50021

Appeal Number: 04A-UI-02859-CT
OC: 02/01/04 R: 02
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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Emina Hrkic filed an appeal from a representative's decision dated March 4, 2004, reference 01, which denied benefits based on her separation from Image, Inc. After due notice was issued, a hearing was held by telephone on April 19, 2004. Ms. Hrkic participated personally and offered additional testimony from Hasan Hrkic. The employer participated by Tammy Huinker, Owner, who offered additional testimony from Lisa Fausch, Office Manager, and Hana Bajraktarevic. Zeljka Krvavica participated as the interpreter.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Hrkic began working for Image, Inc., doing business as Molly Maids, in August of 2000. She voluntarily quit and was rehired on April 10, 2001. Ms. Hrkic worked full time cleaning homes. She was discharged from the employment on February 2, 2004.

The decision to discharge Ms. Hrkic was triggered by an incident, which occurred on January 30. Ms. Hrkic and her partner went to a home and believed the front door was locked. They were told to enter through the back door but neither one would. Instead, they returned to the office. The owner sent Lisa Fausch to the home to let the two in. Both returned and cleaned the home. Ms. Hrkic called on February 2 to report that she would be absent due to illness. This fact is supported by documentation supplied by the employer during the fact-finding interview with Workforce Development on February 27, 2004. The owner called her back and told her she was discharged because of what happened the prior Friday, January 30.

The employer had prior problems with Ms. Hrkic in that her work was not always to the employer's or the customer's standards. The employer lost a customer on December 8, 2003 because the customer was dissatisfied with the level of cleaning. There was a warning prepared for September 3, 2003 because of customer complaints and the fact that Ms. Hrkic was again not wearing her apron. A number of individuals did not want to work with her because they felt she said negative things about others and did not feel she was doing her job.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Hrkic 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). Before a disqualification may be imposed, the evidence must establish that the final act which triggered the discharge constituted misconduct within the meaning of the law. In the case at hand, the employer alleged that Ms. Hrkic was insubordinate in her refusal to use the back door of a home on January 30. In spite of what the employer felt was insubordination, someone was sent to the home to allow access through the front door. The employer did not discharge Ms. Hrkic at the time of the insubordination but allowed her to work that day. Given this factor, the administrative law judge must conclude that the employer did not feel her conduct was so outrageous as to constitute an act of misconduct warranting discharge.

The employer contended that Ms. Hrkic did not meet their cleaning standards on a frequent basis. However, the employer rehired her in April of 2001 in spite of having knowledge of her previous work habits. Moreover, the employer kept her in the employment for close to three years in spite of what was considered poor performance. The administrative law judge appreciates that good help may be hard to find. However, from the employer's description, Ms. Hrkic was not good help. The employer kept Ms. Hrkic in the employment in spite of the fact that a customer cancelled service on December 8, 2003 because of substandard cleaning by Ms. Hrkic.

The administrative law judge is not convinced that Ms. Hrkic received any meaningful warning about her job deficiencies. It is true that the employer had Hana Bajraktarevic translate during

meetings with Ms. Hrkic. However, Ms. Bajrakterevic requested that the translator assist her during the hearing. Given her limited command of the English language, the administrative law judge has doubts as to whether the employer's information was accurately translated to Ms. Hrkic during the course of her employment.

The administrative law judge does not doubt that Ms. Hrkic was an unsatisfactory employee for Molly Maids. However, the employer's evidence fell short of establishing that she deliberately and intentionally engaged in a course of conduct she knew to be contrary to the employer's interests or standards. 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 4, 2004, reference 01, is hereby reversed. Ms. Hrkic was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/kjf