

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

JUDITH L CONNER  
1243 MERLE HAY RD  
DES MOINES IA 50311

DES MOINES REGISTER & TRIBUNE  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-05690-CT  
OC: 04/24/05 R: 02  
Claimant: Respondent (1)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Des Moines Register & Tribune (Register) filed an appeal from a representative's decision dated May 17, 2005, reference 01, which held that no disqualification would be imposed regarding Judith Conner's separation from employment. After due notice was issued, a hearing was held by telephone on June 15, 2005. Ms. Conner participated personally. The employer participated by Sheila Mason, Metro Circulation Director; Rick Bell, Vice President for Circulation; and Sue Decker, Employment Program Manager. The employer was represented by Tracy Taylor of Talx UC Express. Exhibits One through Nine were admitted on the employer's behalf.

#### 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. Conner was employed by the Register from September 7, 2000 until April 28, 2005. She was last employed full time as a zone manager. During the course of her employment, Ms. Conner received several warnings about her management style. She was considered by those working under her to be harsh and confrontational. The warnings were on November 3, 2000; and April 22, July 16, and August 29, 2002. Ms. Conner received a final warning regarding her management style on December 23, 2003. Her management style was also addressed in performance evaluations in the fall of 2001, 2002, and 2003.

The decision to discharge Ms. Conner was based on her conduct of April 24, 2005. Customer service issues arose because newspapers were not being delivered timely. The problems occurred because certain routes were not covered and Ms. Conner did not have prior knowledge that they were not covered. She was out delivering papers herself when she received four calls from her supervisor, Sheila Mason. Ms. Mason was attempting to discover the status of the routes and how the problem occurred. On the fourth call, Ms. Mason indicated she wanted to meet with Ms. Conner and Mary, the district manager for the area where the problems arose. Ms. Conner stated words to the effect, "God damn it, I am not going to take the blame for Mary." As she was closing her cell phone, she also said "fuck it," Only Ms. Conner and Ms. Mason were able to hear the telephone conversation. As a result of her statements during the fourth call, Ms. Conner was suspended on April 24 and notified of her discharge on April 28, 2005.

The employer has a written work rule that prohibits the use of abusive language on the job. A certain amount of profanity is allowed at the workplace as long as it is not directed at an individual. Individuals have been known to use terms such a "shit" and "damn it" without repercussions.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Conner 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. 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. Conner's discharge was triggered by her conduct during a telephone call with her supervisor on April 24, 2005. She does not dispute that she used profanity during the exchange. She was frustrated because papers were not being delivered timely, causing an inordinate amount of customer complaints. She was attempting to drive, deliver papers, and respond to telephone calls from her supervisor at the same time. Her profanity was not used during the course of an argument with Ms. Mason and did not involve any name-calling. No other employees overheard the exchange and, therefore, it did not serve to undermine Ms. Mason's authority within the workplace.

One of the terms used by Ms. Conner was "God damn it." The employer acknowledged that others sometimes used the term "damn it" without repercussions. Therefore, Ms. Conner's use of the term "God damn it" was not a deviation from what the employer would ordinarily tolerate. She also used the term "fuck it." Although the term was used in Ms. Mason's presence, it was not directed at her. Ms. Conner did not say "fuck you." Given the surrounding circumstances of

the call on April 24, the administrative law judge is inclined to view the conduct as a "hot-headed" incident and not an act of deliberate misconduct.

It is true that Ms. Conner had been warned about her management style in the past. She had also been warned about her use of profanity in speaking with subordinates. Her last warning was on December 23, 2003. The warning was identified as a final warning and she was advised that she would be discharged immediately if there was another incident of unprofessional conduct. Since she was not disciplined again or discharged between December 23, 2003 and April 24, 2005, the administrative law judge must conclude that she had not, during the interim, engaged in any conduct the employer felt worthy of discipline or discharge. Given the time lapse since the final warning, the administrative law judge considers the conduct of April 24 to be an isolated instance of poor judgment or discretion. Conduct so characterized is not considered disqualifying misconduct. See 871 IAC 24.32(1). 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 May 17, 2005, reference 01, is hereby affirmed. Ms. Conner was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/sc