

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GAIL S VALENZA

Claimant

APPEAL NO. 14A-UI-05462-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

INTERSTATE POWER & LIGHT COMPANY

Employer

OC: 04/20/14

Claimant: Appellant (2)

96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated May 14, 2014 (reference 01) which denied unemployment insurance benefits. After due notice was provided, a hearing was held from Ottumwa, Iowa on July 24, 2014. The employer indicated they would not participate at the hearing. The claimant withdrew her request for an in-person hearing and agreed to participate by telephone.

ISSUE:

The issue is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Gail Valenza was employed by Interstate Power & Light Company from May 5, 2008 until April 21, 2014 when she was discharged from employment. Ms. Valenza was most recently employed as a full-time customer service representative and was paid by the hour. Her immediate supervisor was Veronica Stoper. Ms. Valenza was discharged based upon the employer's belief that she had disseminated confidential information about another employee's account to a worker in the company's collections department. The employer concluded that discussing the confidential financial business of the employee with a second employee was a violation of the company's code of conduct and discharged Ms. Valenza from her employment.

The claimant, in doing her normal collections work, had noted an unusual pattern in one account and had concluded that because the account had been in the name of a new employee, that the new employee may have used confidential, internal information to allow the account to be placed in another name without proper charges. Because of the unusual nature of the circumstances, Ms. Valenza went to another senior employee in the collections department to ask procedural questions about the matter. The claimant's intent was not to disclose confidential information to the other collections department employee, but to obtain procedural information so that further action could be taken by the company. The claimant denies

reviewing the account of the new employee for an extended period and the claimant denies having any ulterior motives. Ms. Valenza did not consider her inquiry about how to proceed to be a violation of the company's confidentiality policies.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Dep't of Job Serv., 275 N.W.2d 445, 448 (Iowa 1979).

In discharges cases, the employer has the burden of proof. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

Allegations of misconduct without additional evidence should not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to collaborate the allegation, misconduct cannot be established. See 871 IAC 24.23(4).

In the case at hand, the claimant was discharged based upon the employer's belief that she had intentionally provided confidential information to another collections department employee about the account of a third person who was employed by the company. Ms. Valenza testified that she did not provide confidential information, but merely asked procedural questions in an effort to proceed with an unusual situation that involved a third person that had newly been hired by the company and who had potentially found a way to circumvent the company's payment policies.

The administrative law judge finds the claimant's testimony to be credible and not inherently improbable. There being no evidence to the contrary, the administrative law judge concludes that the evidence in the record does not establish misconduct sufficient to warrant the denial of unemployment insurance benefits.

While the decision to terminate Ms. Valenza may have been a sound decision from a management viewpoint, the evidence in the record does not establish disqualifying misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated May 14, 2014 (reference 01) is reversed. The claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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