

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

ANGELA M FLEMING
3733 NE 62ND AVE
ANKENY IA 52001

POWERHOUSE ELECTRIC LLC
121 SE SHURFINE DR STE 9
ANKENY IA 50021-5425

Appeal Number: 05A-UI-06112-JTT
OC: 05/15/05 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, 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:

Powerhouse Electric filed a timely appeal from the June 2, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 23, 2005. Supervisor Joseph Bartlett represented the employer. Angela Fleming participated.

FINDINGS OF FACT:

Angela Fleming was employed by Powerhouse Electric as a full-time office manager from November 20, 2003 until February 23, 2005, when Supervisor Joseph Bartlett discharged her for failing to produce necessary paperwork in a timely fashion.

As office manager, Ms. Fleming's daily duties included collecting, preparing, and organizing paperwork that each of the employer's six to ten crewmembers would follow and utilize through the day. The paperwork included the order and scheduling of projects, special instructions for the electrician, and documentation the electrician would need to complete in connection with each project. Ms. Fleming would also call customers to confirm scheduled projects. Ms. Fleming had many additional duties.

The final incident that prompted the employer to discharge Ms. Fleming occurred on February 23. On that date, a crew chief complained loudly when Ms. Fleming did not have his paperwork ready for him. The employer had previously reprimanded Ms. Fleming on January 5 and 17, 2005, for failing to have paperwork ready for one of the crews. The employer's decision to discharge Ms. Fleming was not based on an intentional wrongdoing, negligence, or carelessness on her part. Instead, the employer based the decision to discharge Ms. Fleming on the employer's conclusion that she was overwhelmed by her assigned duties.

REASONING AND CONCLUSIONS OF LAW:

The question for the administrative law judge is whether the evidence in the record establishes that Ms. Fleming was discharged for misconduct in connection with the employment. It does not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Since the claimant was discharged, the employer has the burden of proof in this matter. 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 is not necessarily serious enough to warrant a denial of unemployment 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. App. 1992).

The evidence in the record establishes that Ms. Fleming was discharged due to perceived inefficiency, or poor performance resulting from inability or incapacity. A discharge based on these reasons would not disqualify Ms. Fleming for unemployment insurance benefits. See 871 IAC 24.32(1)(a). The evidence fails to establish any misconduct on the part of Ms. Fleming. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Fleming was discharged for no disqualifying reason. Accordingly, Ms. Fleming is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Fleming.

DECISION:

The Agency representative's decision dated June 2, 2005, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

jt/kjf