

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MANDAZESHA A CASON

Claimant

APPEAL NO. 10A-UI-03813-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOWROYD WRIGHT EMPL AGENCY INC

Employer

OC: 10/25/09

Claimant: Respondent (1)

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated March 1, 2010, reference 02, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 26, 2010. Claimant participated. Employer participated by Amy Mandarich, branch manager. The record consists of the testimony of Amy Mandarich; the testimony of Mandazesha Cason; and Employer's Exhibit One.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

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

The employer is a temporary employment agency. The claimant's first assignment with the employer started on July 29, 2009. At the time of her termination, the claimant was working as a quality check assistant. She was assigned to Citi Group. This assignment began on October 29, 2009.

Citi Group ended the claimant's assignment on January 15, 2010. The claimant had been overheard gossiping on January 13, 2010, and had been warned not to do so. The next day the claimant was on her break and talking on her cell phone outside the building. She was having a conversation concerning herself. Someone overheard this conversation and concluded that she was gossiping again. Citi Group ended the assignment as a result of this conversation and for being short and abrupt with other employees.

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 leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). See also *Greene v. EAB*, 426 N.W.2d 659 (Iowa App. 1988). The employer has the burden of proof to show misconduct.

There is insufficient evidence in this record to establish a current act of misconduct. The claimant's assignment at Citi was ended by Citi based on Citi's belief that the claimant was gossiping about another employer after having been warned about such conduct. The claimant testified that she was outside the building on her break and talking on her own phone to another individual about herself. This testimony is un rebutted. No one from Citi testified on who overheard the claimant or what was said and when. The employer has some hearsay information from Citi and this hearsay alone cannot establish misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated March 1, 2010, reference 02, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs