IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

KATHY BOR Claimant **AADG INC** **CURRIES-GRAHAM** Employer	**APPEAL NO. 14A-UI-00855-BT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 09/29/13** **Claimant: Respondent (1)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Curries-Graham (employer) appealed an unemployment insurance decision dated January 16, 2014, reference 02, which held that Kathy Bor (claimant) was eligible for unemployment insurance benefits. A hearing was scheduled for February 13, 2014. The employer did not participate in the hearing and a record decision was issued affirming the claimant was qualified for benefits. On February 14, 2014, the employer called the Appeals Bureau and reported no notice of hearing was received so the hearing was rescheduled for March 6, 2014. The employer sent in written documentation on March 5, 2014, in lieu of participation. The administrative law judge was ill on March 6, 2014, so the hearing was rescheduled for March 27, 2014. The employer sent in written documentation on March 26, 2014, in lieu of participation. The claimant participated in the hearing along with Attorney Sarah Riendl. Employer's Exhibit One was admitted into evidence.

ISSUE:

The issues are whether the claimant is disqualified for benefits, whether she was overpaid unemployment insurance benefits, whether she is responsible for repaying the overpayment and whether the employer's account is subject to charge.

FINDINGS OF FACT:

Having reviewed all of the available evidence in the administrative record, the administrative law judge finds: The claimant worked as a full-time machine operator and was employed from February 4, 1995, through December 13, 2013, when she was discharged without explanation. She later learned her termination was due to one inappropriate comment she made to a co-worker on December 9, 2013. The employer has a zero tolerance policy for harassment, and behavior that creates an intimidating, hostile or offensive work environment is prohibited.

The claimant admitted that the employer has a policy prohibiting such behavior but stated that it is not enforced. She testified that the bosses, lead workers and most employees on the floor use profanity without consequences. The claimant admitted that on December 9, 2013, a co-worker yelled at her, and in response, she said, "All you do is bitch, bitch, bitch!" No previous warnings were issued to her in 19 years of employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. It is the employer's burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989).

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1)**.** The claimant was discharged on December 13, 2013, for making an inappropriate comment to a co-worker on one occasion. In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy. However, if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment.

The claimant had worked for the employer for 19 years without any disciplinary warnings. Inasmuch as the employer had not previously warned the claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Benefits are allowed.

DECISION:

The unemployment insurance decision dated January 16, 2014, reference 02, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs