

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNIFER P HURD**  
Claimant

**APPEAL NO. 09A-UI-15605-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOC SERVICES LLC**  
Employer

**OC: 09/20/09**  
**Claimant: Appellant (2)**

Section 96.5(2)a - Discharge

**STATEMENT OF THE CASE:**

The claimant, Jennifer Hurd, filed an appeal from a decision dated October 13, 2009, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on November 18, 2009. The claimant participated on her own behalf and with witness Traci Henderson. The employer, IOC Services, participated by Employee Relation Supervisor Jamie Briesch and Senior Director of Human Resources Troy Kruse. Exhibits One and A were admitted into the record.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Jennifer Hurd was employed by IOC from April 15, 1995 until September 21, 2009 as a full-time dealer. On September 17, 2009, the employer sponsored a bus trip for employees to Chicago to see a baseball game. During the return trip the claimant was alleged to have exposed her breasts to others on the bus. This complaint was made by Susan Poe to Employee Relations Supervisor Jamie Briesch at the end of the trip. As the claimant exited the bus this allegation was brought to her attention by Ms. Briesch and she was asked to provide a statement about it. The statement was provided the next day and the claimant denied the allegations. She denied the allegations at the appeal hearing as well.

Senior Director of Human Resources Troy Kruse reviewed the statement and interviewed other employees who had been on the bus. Some of them confirmed the allegation and others said they did not see the claimant expose her breasts. The claimant was discharged on September 21, 2009, by Mr. Kruse. The conduct was in violation of the standards of conduct which prohibits employees from acting in a way which would have a negative impact on co-workers, guests, the property or the company "overall."

## 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.

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). In the present case the employer provided a written statement from Ms. Poe and testimony from Ms. Briesch about another incident on the bus. The claimant denied the allegations. It is noted that Ms. Poe was some few rows back from the claimant and not in her immediate vicinity. The employer declined to provide written statements or personal testimony from any of the other witnesses.

If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which she was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

**DECISION:**

The representative's decision of October 13, 2009, reference 01, is reversed. Jennifer Hurd is qualified for benefits, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs