

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

JESSI L BAILEY
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STYLECRAFT SERVICES LLC
PO BOX 148
MILFORD IA 51351

Appeal Number: 04A-UI-00368-DWT
OC 06/29/03 R 01
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 are 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

STATEMENT OF THE CASE:

Stylecraft Services LLC (employer) appealed a representative's January 7, 2004 decision (reference 02) that concluded Jessi L. Bailey (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 25, 2004. The claimant participated in the hearing. Jeri Simonsen, a human resource representative, and Margie Ingraham, the claimant's supervisor, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 26, 2001. She worked full time sewing. The claimant's scheduled start time was 7:00 a.m.

Prior to Ingraham becoming her supervisor, the claimant did not receive any warnings when she reported to work late. The claimant had a son with medical problems, which caused her to be late for work a number of times. The claimant's previous supervisor told the claimant that as long as she notified the employer she was going to be late and made up work she missed, reporting to work late due to the claimant's family situation would not be a problem. Since September 2003, the claimant experienced many problems with her son, which resulted in her being frequently late for work. On November 26, 2003, the employer gave the claimant a written warning for reporting to work late too many times. The warning informed the claimant that if she did not work as scheduled, further disciplinary action would be taken. The claimant was not late for work again, but she called in sick on December 6, 2003.

On December 9, the employer received information the claimant made comments to a new employee, CK, that offended CK. When the employer talked to CK, she confirmed the claimant's comments offended her and that even though she told the claimant this, the claimant continued making the same kind of comments. CK was also offended by the use of the claimant's profanity in the workplace. When the employer talked to the claimant, the claimant acknowledged she had been joking with CK because she always appeared so happy. The claimant had no idea she offended CK in any way. The claimant did not know CK because she had just started working with the claimant in early December. On December 9, the employer gave the claimant a written warning for using abusive or inappropriate language at work.

Ingraham never heard the claimant used abusive or inappropriate language at work. Even though the December 9 incident was the first time anyone complained about the claimant's language and there were no other incidents reported, the employer discharged the claimant on December 12. The employer discharged the claimant for harassing a co-worker and for the claimant's poor attendance. The claimant reopened her unemployment insurance claim during the week of December 7, 2003.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

After the claimant received the November 26, 2003 written warning for reporting to work late, she was not again late for work. On December 6, when she called in to report she was ill and unable to work, she properly notified the employer she was ill. Even though the claimant received a warning for attendance, a claimant has not committed work-connected misconduct when she is ill and unable to work. The employer may have had business reasons for discharging the claimant for attendance reasons. The December 6 absence does not, however, constitute a current act of work-connected misconduct.

The employer also discharged the claimant for harassing another employee. The facts show no one complained about the claimant until CK, a new employee, worked with the claimant and her co-workers. CK and the claimant had only worked about a week when the employer received information that the claimant harassed CK. It is difficult to understand how during this week, Ingraham never heard the claimant make the comments employees reported the claimant had made. CK may have been offended by some of the claimant's remarks, but neither of the complaining employees testified at the hearing. The claimant's testimony as to what she said and occurred must be given more weight than the employer's reliance on hearsay information. Again, based on the employer's investigation, the employer may have compelling reasons to discharge the claimant. The facts do not, however, establish that the claimant intentionally or even substantially disregarded the standard of behavior the employer has a right to expect from an employee. The evidence does not establish that the claimant committed work-connected misconduct. As of December 7, 2003, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's January 7, 2004 decision (reference 02) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of December 7, 2003, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjf