

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MCKENZEE H VERRY
Claimant

APPEAL NO. 11A-UI-07019-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DILLARD INC
Employer

OC: 05/01/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer an unemployment insurance decision dated May 19, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on June 21, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Denny Verry. Andrew Niekrasz participated in the hearing on behalf of the employer with a witness, Diane Willoughby.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as a sales associate in the shoe department from September 2010 to March 29, 2011. The claimant was informed and understood that under the employer's work rules, employees were expected to exhibit positive behavior toward their job, management, supervisors, and coworkers in their action and speech. Diane Willoughby was her supervisor. Andrew Niekrasz was the operations manager.

On March 29, Willoughby approached the claimant and told her that she wanted to touch base with her about not meeting sales goals. When Willoughby tried to discuss her deficiencies, the claimant complained about an issue she had with a coworker. In Willoughby's opinion, the claimant was displaying a negative attitude and not listening. She asked the claimant if she wanted to meet with Niekrasz. The claimant agreed to meet with Niekrasz.

When the claimant met with Willoughby and Niekrasz, she was informed that she was receiving a written warning for her conduct towards Willoughby. The claimant expressed disagreement with getting the warning, and Niekrasz did not believe she was listening. After seeing her roll her eyes and respond "whatever" to something that was said, Niekrasz discharged the claimant. There is no evidence of any previous disciplinary action taken against the claimant for similar conduct.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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 substantial and 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).

No willful and substantial misconduct has been proven in this case. The claimant was somewhat recalcitrant in her dealings with Niekrasz and Willoughby, but I do not believe the conduct rose to the level of disqualifying misconduct under the law.

DECISION:

The unemployment insurance decision dated May 19, 2011, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs