

**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**

**VIRGINIA A BENCH
866 – 4TH AVE SE RM#1
CATHRINE MCAULEY CNT
CEDAR RAPIDS IA 52401**

**TEMP ASSOCIATES
1000 N ROOSEVELT AVE
BURLINGTON IA 52601**

**Appeal Number: 04A-UI-07345-DWT
OC: 06/06/04 R: 03
Claimant: Appellant (2)**

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:

Virginia A. Bench (claimant) appealed a representative's July 1, 2004 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits and the account of Temp Associates (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 20, 2004. The claimant participated in the hearing. Deborah Eagleman, the branch manager, appeared on the employer's behalf. During the hearing, Employer's Exhibits One and Two were offered and admitted as evidence. 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 registered to work for the employer's clients in July 2003. The employer assigned the claimant to work at Mount Pleasant Foods. The claimant worked at this assignment until October 16, 2003. On October 17, Mount Pleasant Foods told the employer the claimant could no longer work at its business because of an October 16 incident between the claimant and a lead person.

Mount Pleasant Foods reported that on October 16, the claimant swore and yelled at a lead person. The claimant did not yell at supervisor. The claimant may have been upset with a supervisor and may have used the word, shit, but she did not make a vulgar comment about the supervisor. The employer told the claimant she could no longer work at Mount Pleasant Foods because of problems between the claimant and another employee.

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).

The claimant's testimony is credible and must be given more weight than the employer's reliance on hearsay information from people who did not testify at the hearing. A preponderance of the evidence establishes the claimant did not intentionally or substantially disregard the standard of behavior the employer has a right to expect from an employee. Based on the Mount Pleasant Foods' report, the employer established business reasons for discharging the claimant. The evidence does not, however, establish that the claimant committed work-connected misconduct. Therefore, as of June 6, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's July 1, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of June 6, 2004, 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/b