

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CONNIE J HERRIGES

Claimant

APPEAL NO. 14A-UI-08062-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

H O SEIFFERT LUMBER CO

Employer

OC: 07/13/14

Claimant: Respondent (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

H O Seiffert Lumber Company filed a timely appeal from a representative's decision dated July 30, 2014 (reference 01) which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on August 27, 2014. Claimant participated. The employer participated by Mr. William Burgess, Company President.

ISSUE:

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

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Connie Herriges was employed by H O Seiffert Lumber Company from July 1, 1999 until July 2, 2014 when she was discharged from employment. Ms. Serriges was employed as a full-time accountant/bookkeeper and was paid by the hour. Her immediate supervisor was the company president Mr. Burgess.

Ms. Serriges was dismissed from her employment with H O Seiffert Lumber Company on July 2, 2014 because the employer was dissatisfied with the manner in which Ms. Serriges had been performing her duties as an accountant/bookkeeper and because the employer had secured a replacement for the claimant at that time.

The employer had become increasingly dissatisfied with Ms. Serriges performance and her work capabilities and became increasingly concerned about her work abilities as time had progressed. The claimant was not working up to the employer's work expectations and often couldn't explain bookkeeping entries or explain discrepancies in cash receipts and bank deposits. The employer also noted a recent discrepancy in the company's cash drawer. The employer also believed that Ms. Serriges was not performing job duties that had been assigned to her such as filing and completing accounts receivables statements. Although the employer had been dissatisfied with the claimant's performance for a substantial period of time,

the employer did not warn or counsel Ms. Serriges that her work performance was unsatisfactory or that her employment was in jeopardy. The employer secured a replacement for Ms. Serriges job position and dismissed the claimant from her job position after the replacement had been secured. It is the claimant's position that she performed her duties to the best of her ability and was unaware of the employer's dissatisfactions.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. It does not.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Dep't of Job Serv., 275 N.W.2d 445, 448 (Iowa 1979).

In discharge cases, the employer bears the burden of proof to establish job disqualifying misconduct on the part of a claimant. See Iowa Code section 96.6(2).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants the denial unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” When based upon carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature, Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984), for work performances, not misconduct, in the absences of evidence of intent.

An employer may discharge an employee for any number of reasons, or no reason at all, but 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.

Inasmuch as the employer had not previously warned or counseled the claimant about any of the issues leading up to the separation, it has not met the burden of proof to establish that the claimant acted deliberately or negligently in violation of company policy or prior warning. When an employer expects an employee to perform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given.

In the case at hand, the employer did not warn or counsel the claimant that her performance was unsatisfactory or that her employment was in jeopardy. The employer chose to retain the claimant as an employee until the employer made sufficient arrangements to secure a capable replacement before discharging the claimant. The determination to terminate Ms. Serriges may have been a sound decision from a management viewpoint, but for the above-stated reasons the administrative law judge concludes the claimant’s discharge took place under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of the law.

DECISION:

The representative’s decision dated July 30, 2014 (reference 01) is affirmed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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