

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAREN S GARREANS
Claimant

APPEAL NO. 12A-UI-03002-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALS CORNER OIL CO
Employer

OC: 02/05/12
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Al's Corner Oil Company filed a timely appeal from a representative's decision dated March 16, 2012, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on April 9, 2012. The claimant participated. The employer participated by Deb Ludwig, Theresa Wigland, Chris Drake, Danee Snyder, and Cindy Tiefenthaler. Employer's Exhibits 1 through 12 were received into evidence.

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 the evidence in the record, the administrative law judge finds: Karen Garreans was employed by Al's Corner Oil Company from November 12, 2005, until February 8, 2012, when she was discharged from employment. Ms. Garreans last held the position of full-time store manager and was paid by the hour. Her immediate supervisor was Deb Ludwig.

A decision was made to terminate Ms. Garreans when the employer reasonably concluded that the most recent complaint about Ms. Garreans' rudeness to customers was true. A customer had called to complain that Ms. Garreans had been rude to his son regarding an error in a credit card transaction that had taken place with Ms. Garreans. The customer further complained that Ms. Garreans had then personally come to his residence and had displayed rudeness at that location as well. Ms. Garreans had called a supervisor that weekend to inform the supervisor of the incident and had informed the supervisor that she had gone to the customer's house about his complaint. A store employee also verified that Ms. Garreans had been gone during the time in question. These factors caused the employer to conclude that the allegations made about the claimant's conduct were valid.

Because the claimant had been repeatedly warned in the past about rudeness, gossiping and failure to follow company policies, a decision was made to terminate Ms. Garreans from her employment.

The claimant denies going to the customer's residence. It is the claimant's position that the credit card error was resolved and that the complaint about her demeanor was unfounded.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

In this matter, numerous witnesses on behalf of the employer testified regarding the claimant's history of rudeness to customers and her failure to follow company policies. The evidence in

the record establishes that a complaint had been received specifically complaining about Ms. Garreans' conduct with a customer who had complained about a credit card transaction. The evidence establishes Ms. Garreans had called a manager who was available that weekend to inform the manager of the incident and that Ms. Garreans had stated at the time that she had gone to the customer's house during the time that the incident was taking place. An hourly employee of the company also verified the claimant had been gone during the time frame in question (See Exhibit 10), which led the employer to the reasonable conclusion that Ms. Garreans had been involved in the incident.

The evidence in the record establishes the claimant had been warned on numerous occasions about her demeanor and rudeness to customers. The claimant had been placed on notice that further actions of that nature could jeopardize her employment.

The administrative law judge concludes, based upon the totality of the evidence in the record, that the employer has sustained its burden of proof in establishing disqualifying misconduct on the part of the claimant. Claimant's ongoing rudeness to company customers after being repeatedly warned showed a willful disregard for the employer's interests and standards of behavior and thus was disqualifying conduct under the provisions of the Employment Security Act. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

DECISION:

The representative's decision dated March 16, 2012, reference 01, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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