

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JENNFIER L BALLARD
Claimant

EGS CUSTOMER CARE INC
Employer

APPEAL 17A-UI-06536-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/28/17
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 23, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 13, 2017. Claimant participated along with her witness David Carter. Employer did not participate.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a customer service representative August 1, 2014 through May 26, 2017 when she was discharged. The claimant was discharged for having a break percentage larger than 6.25 percent. The claimant had been given warnings about her break percentage, but she has demonstrated that she was treated differently than at least one other employee, David Carter. Mr. Carter was put a final warning for too high of a break percentage, but during the same time period the claimant was being written up, Mr. Carter was told his overage was ok.

The claimant's break percentage did not become a problem for the employer until the claimant reported another employee she was training putting his hands on her shoulders and his fingers around her neck to choke her. When the claimant complained about his behavior **she** was demoted from her job despite the employer telling her she had done nothing wrong. From that point on, the employer took actions against her that treated her differently than other employees. The claimant's computer would lock out every time she went into break status which would make her late logging back in for breaks. She notified the employer, but they still counted the lock out periods against the claimant when calculating her break percentage. Two days after the claimant complained about being assaulted by a coworker, she made a complaint of racial discrimination. She was told her claim would be investigated, but it was not. Instead the employer continued to treat her differently than other employees. The claimant was "double gated:" meaning she would get significantly more calls than coworkers. Mr. Carter confirmed that he and other employees would sit at their desks watching movies, with few calls coming to

them, while the claimant took back to back to back calls with no break. The employer was making the claimant's work life difficult intentionally.

Employees were allowed to access the 'scoreboard' online to keep track of their statistics. All employees except the claimant, the claimant was told that she could not rely on the scoreboard as the employer had decided to hand calculate her break percentage. The numbers used by the employer were not shared with the claimant. The claimant's attendance, quality control and other measures of performance were all excellent, well ahead of most of her coworkers.

The claimant had medical issues with using the rest room that the employer would not accommodate, despite the fact that others similarly situated workers were accommodated. Managers would intentionally stop the claimant to ask her questions as she was on her way back from break in order to increase her break percentage.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

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 claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 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.”

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The claimant was a credible witness as was Mr. Carter. The employer offered no testimony to refute the claimant's claims of disparate treatment. Mr. Carter corroborated the claimant's allegations that the break policy was applied to the claimant differently than to him. The claimant was an excellent employee who only began experience problems after she reported an assault by a coworker. The evidence does not support a finding that the claimant was discharged due to job connected misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The June 23, 2017, (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs