

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALEATHA N HUGHES
Claimant

APPEAL NO. 16A-UI-10252-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CIGARETTE OUTLET INC
Employer

**OC: 06/12/16
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Aleatha Hughes (claimant) appealed a representative's September 14, 2016, decision (reference 04) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Cigarette Outlet (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 10, 2016. The claimant participated personally. The employer participated by Debra Schnyder, Corporate Supervisor, and Leigh James, Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the company from March 2, 2015, to May 26, 2016. She was rehired on August 4, 2016, as a part-time sales clerk. The claimant did not sign for receipt of the employer's handbook when she was rehired. The employer did not issue her any warnings. The corporate supervisor made the schedules and employees had to speak with her about their availability before she could create their schedules. The claimant also worked at a flower shop and the employer worked around her hours at Flowerama.

After work on August 15, 2016, the claimant sought out the corporate supervisor to talk about the upcoming schedule. The claimant's grandchild was having a birthday party on Sunday and the claimant wanted to attend the party. The corporate supervisor would not speak with her on August 15, 2016. On August 17, 2016, the claimant went to the work location on her day off to speak with the corporate supervisor about her schedule. The schedule had not been created yet.

The claimant said she wanted to talk about the schedule. The corporate secretary said she was done talking about it, was tired of talking about it, and would not talk about it. The claimant tried to ask for part of Sunday off but the corporate secretary would not listen. The claimant went to her car and took a deep breath. The corporate secretary asked her if she was quitting. The

claimant came back inside and said she was not quitting. She wanted to talk about her schedule. The two raised their voices. The corporate secretary made hand motions at the claimant like a talking hand. The claimant called her a bitch. The employer terminated the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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).

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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). In this case the corporate secretary was not performing the functions of her job and making fun of an employee. The corporate secretary chose not to speak with the claimant on October 15, 2016. She forced her to come in on the claimant's day off. Even so, the corporate secretary would not listen to the claimant. She mocked the claimant

with hand gestures. One cannot condone the claimant's utterance but it appears to have been said in frustration at the corporate secretary's inappropriate behavior. The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's September 14, 2016, decision (reference 04) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs